



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2010

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney's Office
1019 Congress 15th Floor
Houston, Texas 77002

OR2010-03993

Dear Mr. Swope:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 377299 (C.A. File No. 10GEN0318).

The Harris County Attorney's Office (the "county attorney") received a request for (1) three categories of information regarding a specified motor vehicle accident and (2) policy and procedures pertaining to motor vehicle-related accidents involving the county. You claim that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the information you submitted. We assume you have released any other information that is responsive to this request, to the extent that such information existed when the county attorney received the request.¹ If not, then any such information must be released immediately. See Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

We note that one of the submitted documents is not related to the accident specified by the requestor and thus is not responsive to this request for information. This decision does not

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

address the public availability of that document, which we have marked, and it need not be released in response to this request.

We also note that the submitted information includes copies of a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential.² *See id.* § 550.065. Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the county with two of the three specified items of information. As a general rule, the exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the county attorney must release the crash reports we have marked pursuant to section 550.065(c)(4) of the Transportation Code.

We next note that the remaining records contain personal information relating to a peace officer. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.³ Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note that section 552.117(a)(2) protects a peace officer's cellular telephone or pager number if the officer pays for the cell phone or pager service with his personal funds. *See* Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) excepts from disclosure peace officer's cell phone or pager number if officer pays for cell phone or pager service); *but see* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). The information we have marked under section 552.117(a)(2) must be withheld

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential.

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, 352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

to the extent it consists of the peace officer's home address, home telephone number, or a telephone number for cell phone service the officer pays for with his personal funds.

We note that the peace officer's personal information also appears in the submitted incident report. Section 552.117(a)(2) is not applicable to information contained in the incident report, which is a law enforcement record of the county sheriff's office and not a personnel record. Nevertheless, the county attorney may be required to withhold the personal information in the incident report under section 552.1175 of the Government Code.⁴ This section also protects information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a). Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(a)-(b). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the officer pays for the cell phone service with his personal funds. The information we have marked under section 552.1175 must be withheld to the extent the officer elects to restrict access to his personal information under section 552.1175(b) and the information consists of the officer's home address, home telephone number, or a telephone number for cell phone service the officer pays for with his personal funds.

Lastly, section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1)-(2). The Texas driver's license and motor vehicle information we have marked must be withheld under section 552.130.⁵ Because this exception protects personal privacy, the requestor has a right of

⁴Section 552.1175 also is a mandatory exception that may not be waived. Gov't Code §§ 552.007, .352; ORD 674 at 3 n.4.

⁵We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

access under section 552.023 of the Government Code to her own Texas driver's license and motor vehicle information. *See id.* § 552.023(a).⁶ Therefore, the requestor's driver's license and motor vehicle information may not be withheld under section 552.130 and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

In summary: (1) the crash reports we have marked must be released pursuant to section 550.065(c)(4) of the Transportation Code; (2) the information we have marked under section 552.117(a)(2) of the Government Code must be withheld to the extent it consists of the peace officer's home address, home telephone number, or a telephone number for cell phone service the office pays for with his personal funds; (3) the information we have marked under section 552.1175 of the Government Code must be withheld to the extent the officer elects to restrict access to his personal information under section 552.1175(b) and the information consists of the officer's home address, home telephone number, or a telephone number for cell phone service the officer pays for with his personal funds; and (4) the Texas driver's license and motor vehicle information we have marked must be withheld under section 552.130 of the Government Code. The rest of the responsive information must be released.⁷

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

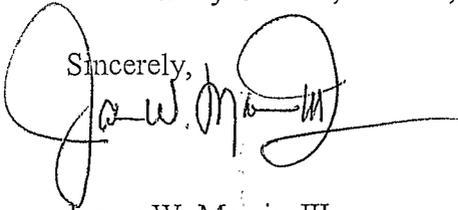
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

⁶Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

⁷We note that some of the information that must be released would be confidential with respect to the general public. In this instance, however, the requestor has a special right of access to that information. *See* Gov't Code § 552.023(a). Further, and as noted previously, this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code. Thus, if the county attorney receives another request for these same records from a person other than one with a right of access under section 552.023, the county attorney is authorized to withhold this requestor's Texas driver's license and license plate numbers under section 552.130 and her insurance policy number under section 552.136 without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 377299

Enc: Submitted documents

c: Requestor
(w/o enclosures)