



March 27, 2000

Mr. Gary W. Smith
Legal Advisor
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2000-1183

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133497.

The City of Baytown (the "city") received a request for a police report and related information regarding a specific assault. You claim that portions of the requested information are excepted from required public disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with certain types of personal information about school district employees. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989).

However, a governmental body is only obliged under section 552.117 to withhold information pertaining to its own employees and officials. The legislature has established no mechanism for a governmental body's apprising itself of whether given individuals were

officers or employees of other governmental bodies, or whether such individuals had exercised the option under section 552.024 to prohibit release of section 552.117 information pertaining to themselves. We therefore do not believe it was the legislature's intent to require a governmental body to protect section 552.117 information for individuals who are not, and who have not been, officials or employees of that governmental body.

The submitted documents contain home addresses, home telephone numbers, social security numbers, and family member information in regard to two school district employees. Because the school district employees are not employees of the city, the city has no obligation under section 552.117 to withhold the information. However, you state that the city "believes that these employees have requested protection." If the city has actual notice that the two employees in question made timely elections for confidentiality under section 552.024, then the city may withhold the employees' personal information under section 552.117. We have marked the social security numbers, home addresses, home telephone numbers, and family member information that the city may withhold if the city has actual notice that the employees elected for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the city has no such notice, then it may not withhold the information under section 552.117. However, the school district employees' social security numbers may nevertheless be confidential as explained below.

The submitted information also contains confidential motor vehicle information. Section 552.130 of the Government Code exempts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, the city must withhold the Texas driver's license numbers that appear in the submitted documents. We have marked the information that the city must withhold under section 552.130.

Finally, we turn to the social security numbers that appear in the submitted documents. The documents reveal the social security numbers of the accused, and as explained above, two school district employees. Section 552.101 of the Government Code exempts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes social security numbers confidential if they are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Therefore, if the social security numbers contained in the submitted documents meet the criteria of section 405(c)(2)(C)(viii)(I), then they are confidential under this provision as encompassed by section 552.101.

In conclusion, the city must withhold the Texas driver's license numbers under section 552.130, and the accused's social security number under section 552.101 in conjunction with federal law if it was obtained or maintained by the city pursuant to a law enacted on or after October 1, 1990. In regard to the school district employees' social security numbers, home addresses, home telephone numbers, and family member information, the city may withhold this information under section 552.117 if the city has actual notice that the employees elected for confidentiality under section 552.024 prior to the date on which the request for this information was made. Finally, if the city has no such notice, meaning that section 552.117 is inapplicable, then the social security numbers of the school district employees may be confidential under section 552.101 in conjunction with federal law if they were obtained or maintained by the city pursuant to a law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 133497

Encl: Submitted documents

cc: Ms. Freida M. Kilby
209 Long Drive
Baytown, Texas 77521
(w/o enclosures)