



March 14, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2001-1004

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144960.

The Texas Department of Public Safety (the "department") received a request for "all information pertaining to administrative investigation file # C00-037." You have submitted for our review information responsive to the request, marked as exhibits A, B, and C. You indicate that the information in exhibit C has been released to the requestor. You assert that exhibits A and B are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that prior to its release, you redacted portions of the information in exhibit C. In Open Records Decision No. 670 (2001), this office concluded that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure, pursuant to section 552.117(2) of the Government Code, without first requesting a decision from this office. You inform this office that the individual whose information was redacted from exhibit C is a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure. Thus, we assume you redacted the above-referenced information from the exhibit in accordance with our previous determination in Open Records Decision No. 670 (2001). We note, however, that the department also redacted the individual's date of birth and

driver's license number. This office has not issued a previous determination with regard to this information. Nevertheless, as noted below in our discussion of section 552.130 of the Government Code, we find the department must withhold the driver's license number information that was redacted from exhibit C. The individual's date of birth, however, is not excepted from disclosure and must be released.<sup>1</sup>

Section 552.117 of the Government Code provides in pertinent part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure  
... regardless of whether the officer complies with Section 552.024[.]

Gov't Code § 552.117(2); *see also* Gov't Code § 552.024, Open Records Decision No. 670 (2001). By its express terms, the above provision applies to the referenced information *of a peace officer*. We note that exhibit A includes information pertaining to an administrative investigation of a peace officer. Accordingly, to the extent the above-referenced information is contained in such administrative investigation records, the department must not release such information to the requestor. We have marked the documents accordingly. You must redact the information we have marked. Except as otherwise noted herein, the remaining information in these records is subject to release to the requestor.

We also note, however, that exhibits A and B contain law enforcement records pertaining to the criminal investigation of a suspect. The named individual — who also happens to be a peace officer — is identified as the suspect. The fact that the suspect also happens to be a peace officer does not mean that the personal information in the criminal investigation records is contained therein in the individual's capacity as a peace officer. Rather, the references to the individual's personal information in the records of the criminal case are references to personal information of a member of the public who is identified in the records as a suspect of a crime. Exhibit B consists entirely of records of the criminal case, and many of the documents in exhibit A also comprise such records. Section 552.117 does not apply to such information. Accordingly, the personal information of the individual that is

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<sup>1</sup>For your convenience, we have marked with red flags the documents in exhibit C that contain the individual's date of birth.

contained in the records of the criminal case may not be withheld from the public pursuant to section 552.117 of the Government Code.<sup>2</sup>

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

This provision is intended to protect the privacy of members of the public. Accordingly, you must withhold the Texas driver's license numbers contained in all three exhibits. We have marked the documents accordingly.

Finally, we note that to the extent the individual's social security number is not protected by section 552.117(2) because, as explained above, it is contained in criminal investigation records, such information may nevertheless be excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that 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 id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the department must withhold the individual's home address, home telephone number, social security number, and family member information that was redacted from exhibit C, as well as this same information contained in the documents that we have marked in exhibit A, pursuant to section 552.117(2). The remaining documents in exhibit A as well

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<sup>2</sup>For your convenience, we have marked with green flags the criminal investigation records to which section 552.117 of the Government Code does not apply.

as the documents in exhibit B are criminal investigative records to which section 552.117 does not apply, and the department therefore may not withhold any of the information in these documents pursuant to section 552.117. The department must withhold the Texas driver's license numbers contained in the exhibits pursuant to section 552.130. The department may also be required to redact the social security numbers we have marked pursuant to section 552.101, as provided above. The remaining information in the exhibits must be released to the requestor.

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).

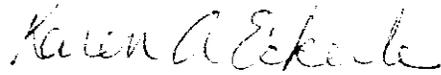
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/MG/seg

Ref: ID# 144960

Encl. Submitted documents

cc: Mr. Jim McDougal  
110 Brookhaven  
Conroe, Texas 77385  
(w/o enclosures)