



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 17, 2002

Mr. Walter E. Zellers
City Attorney
City of Weatherford
P.O. Box 255
Weatherford, Texas 76086

OR2002-7225

Dear Mr. Zellers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173896.

The Weatherford Police Department (the "department") received a request for "any supplemental reports, all photographs and the witness statements" from police report number 200231893, concerning a motor vehicle accident that occurred in the City of Weatherford on August 30, 2002. You claim that portions of the requested information are excepted from disclosure under sections 552.119 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you assert that some of the information at issue is excepted from disclosure under section 552.130 of the Government Code in conjunction with chapter 730 of the Transportation Code. Section 552.130 of the Government Code governs the release of information obtained from motor vehicle records and provides as follows:

(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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Section 552.130 is an exception to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. However, as you acknowledge, the information you seek to withhold under section 552.130 is contained in an accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code §§ 550.064 (Texas Peace Officer's Accident Report form). The public availability of information in accident reports completed pursuant to chapter 550 of the Transportation Code is not governed by the Act, but rather is governed by section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(b), (c).

As you acknowledge, section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has provided the date and specific location of the accident described in the report. Thus, the information in the accident report, submitted as Exhibits B through F, is expressly made public under section 550.065(b).

Information expressly made public by a statute other than the Act may not be withheld from disclosure pursuant to one of the Act's exceptions. *See* Open Records Decision No. 623 (1994); *see also* Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of the Act); *cf.* *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492 (Tex. App.—Beaumont 1997, orig. proceeding) (concerning public disclosure of affidavits in support of executed search warrants). Therefore, the information at issue made public by section 550.065 of the Transportation Code may not be withheld from public disclosure pursuant to section 552.130 of the Government Code in conjunction with chapter 730 of the Transportation Code. We therefore determine the department must release the information in Exhibits B through F to the requestor.

Next, you contend that some of the submitted photographs are excepted from disclosure under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer¹, that, if released, would endanger the life or

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has determined that this provision excepts such photographs from disclosure without the need for any specific showing that release of the photograph would endanger the life or safety of the officer. Open Records Decision No. 502 (1988). It does not appear that any of the exceptions to section 552.119 apply. Furthermore, you inform us that none of the peace officers depicted in the submitted photographs have executed written consent to disclosure of their pictures. Thus, the department must withhold the photographs that depict peace officers under section 552.119, unless the department obtains written consent from the peace officers for their disclosure.

Finally, we note that some of the submitted photographs that do not depict peace officers contain Texas license plate numbers. The department must withhold the license plate numbers from these photographs pursuant to section 552.130 of the Government Code.

In summary, the department must release the information in Exhibits B through F in its entirety pursuant to section 550.065(b) of the Transportation Code. Photographs that depict peace officers must be withheld under section 552.119 of the Government Code. Texas license plate numbers must be withheld under section 552.130 of the Government Code. The remainder of the submitted information 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 173896

Enc: Submitted documents

c: Ms. Kerry Robinson
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(w/o enclosures)