



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2003-8542

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191915.

The Texas Department of Criminal Justice (the "department") received a request for all documents and e-mails related to the terminations of specified department employees. You state that the department plans to release the submitted reprimand forms but claim that the remainder of the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we will address the submitted reprimand forms. You state that the department will release all twenty-nine of the submitted reprimand forms but claim that the marked information contained in the documents may be excepted from disclosure under section 552.117 of the Government Code. The Seventy-eighth Legislature amended section 552.117 to except from required public disclosure the present and former home addresses and telephone numbers, social security number, and family member information of "a current or former employee of the [department] or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175." *See* Act of May 28, 2003, 78th Leg., R.S., ch. 947, § 1, 2003 Tex. Sess. Law Serv. 2822 (to be codified as an amendment to Gov't Code § 552.117(a)(3)). We note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of

section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).” (Emphasis added.); see also Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). The department must withhold the marked information under section 552.117(a)(3).

We will now address your remaining claims. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You inform us that the submitted information relating to Officer Garcia pertains to a pending prosecution. You also state that the submitted information relating to Officer Heasley pertains to an ongoing criminal investigation. We therefore believe that the release of the information relating to these two officers “would interfere with the detection, investigation, or prosecution of crime.” *Id.* Thus, the department may withhold the information relating to Officers Garcia and Heasley under section 552.108(a)(1).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You assert that the criminal investigations relating to Officers Edwards and Dearman have been closed and did not result in convictions or deferred adjudications. Therefore, the department may withhold the information relating to Officers Edwards and Dearman under section 552.108(a)(2).

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007. As we base our conclusions on section 552.108, we need not address your section 552.134 claim other than to note that the basic information at issue is not excepted from disclosure under section 552.134. See Gov’t Code § 552.029(8) (basic information about an alleged crime involving an inmate is not excepted under section 552.134).

In summary, the department must release the submitted reprimand forms, with the exception of the marked information, which must be withheld under section 552.117. The department

may withhold the remainder of the submitted information under section 552.108, with the exception of basic information, which must be released.

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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "Amy Peterson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 191915

Enc. Submitted documents

c: Mr. Randy Wallace
KRIV Houston
4261 Southwest Freeway
Houston, Texas 77027-7201
(w/o enclosures)