



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2004

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2004-0279

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194146.

The Town of San Felipe (the "town"), which you represent, received a request for information relating to a specified automobile accident and a police officer who was involved in the accident. The requestor also asks questions relating to the accident. You claim that information in the records you have submitted to this office is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.119, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We first address the fact that the request asks the town to answer factual questions. This office has stated on numerous occasions that the Public Information Act does not require governmental bodies to answer factual questions or perform legal research. *See, e.g.*, Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990) (construing statutory predecessor). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). We assume that the town has made a good faith effort to relate the entirety of the request, including the factual questions, to information the town maintains.

¹To the extent any additional responsive information exists, we assume you have released it to the requestor. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). In addition, you have included information that you indicate is not responsive to this request. We do not address this information in this ruling.

We turn now to the exceptions you claim regarding the submitted information. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 402.083 of the Labor Code, which pertains to records of the Texas Workers' Compensation Commission ("TWCC"), provides in part:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

Labor Code § 402.083(a). This provision makes confidential information in TWCC's claim files. *See* Open Records Decision No. 619 (1993). Section 402.086(a) of the Labor Code essentially transfers this confidentiality to information that other parties obtain from TWCC's files. Section 402.086(a) provides as follows:

- (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Labor Code § 402.086(a). In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to sections 402.083 and 402.086 protected information received from the Industrial Accident Board (now TWCC), but did not protect information regarding workers compensation claims that the governmental body did not receive from TWCC. You state that the information at issue was provided to the town by TWCC. We agree that some of the records you seek to withhold on this basis reflect that they were created by TWCC and provided to the town by TWCC. These records, which we have marked, are confidential under sections 402.083 and 402.086 and must be withheld under section 552.101. We note, however, that other documents at issue reflect that they were not created by or obtained from TWCC; such documents are not confidential under sections 402.083 and 402.086 and may not be withheld on this basis. *See* Open Records Decision No. 533 at 4 (1989).

You also assert that some of the submitted information may be withheld pursuant to section 552.108(a)(1) of the Government Code. This provision excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note, however, that section 552.108 is generally inapplicable to a police department's internal administrative investigations that do not involve the investigation or prosecution of

crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

In this instance, you state that “[s]ome of the information contained in the *personnel* file . . . relate to the incident of [sic] which this request is centered. . . . Information is still being gathered regarding this incident and a final disposition has not been reached.” (Emphasis added.) You do not inform us that the investigation at issue is criminal in nature, nor have you otherwise explained how release of any part of this personnel file “would interfere with the detection, investigation, or prosecution of *crime*.” Gov’t Code § 552.108(a)(1) (emphasis added). Thus, none of the submitted information may be withheld on the basis of section 552.108(a)(1). *See City of Fort Worth*, 86 S.W.3d at 328-29 (section 552.108 generally not applicable to internal administrative investigations involving law enforcement officers that did not result in criminal investigation or prosecution); *Morales*, 840 S.W.2d at 526 (predecessor to section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor to section 552.108 not applicable to internal affairs investigation); *see also* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Pruitt*, 551 S.W.2d 706 (governmental body must reasonably explain how and why release of requested information would interfere with law enforcement).

Next, we note that section 552.117 of the Government Code applies to some of the information at issue. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality under section 552.024.² You indicate that the individual at issue was a licensed peace officer when the town received this request. Therefore, we conclude that, under section 552.117(a)(2), the town must withhold the listed information concerning this individual. We have marked the information that the town must withhold.³

You also assert that some of the submitted information is excepted from disclosure pursuant to section 552.119 of the Government Code, which protects photographs of peace officers under certain circumstances. We note, however, that the submitted information does not include any photographs. Therefore, we do not address your arguments regarding section 552.119.

In addition, you contend that a portion of the submitted information must be withheld under section 552.130. This section excepts from disclosure “information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state.” Pursuant to section 552.130, the town must withhold the information we have marked.

²“Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

³Because of our ruling on this issue, we need not address your arguments regarding section 552.1175.

Finally, you assert that section 552.136 of the Government Code excepts some of the submitted information from disclosure. This section provides:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136.

You state that you “have highlighted ABA routing numbers and account numbers from the bottom of checks issued by TML Risk Pool, as well as the Town. If released, these numbers could easily be used to transfer money out of the entities’ bank accounts.” We have reviewed the highlighted information and marked the account information that the town must withhold pursuant to section 552.136. We note, however, that some of the numbers that you have highlighted do not constitute routing or account numbers. You have provided no explanation regarding the nature of these other numbers and do not assert or explain how these numbers function as “credit card, debit card, charge card, or access device number[s].” We thus have no basis for concluding that these other numbers are excepted from disclosure under section 552.136, and they may not be withheld on that basis.

In summary, we have marked the information that the town must withhold pursuant to sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. The remaining submitted information 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).

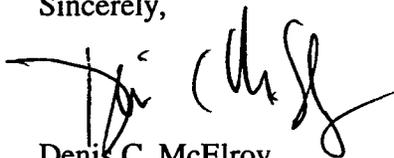
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 194146

Enc. Submitted documents

c: Mr. Jim Webre
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(w/o enclosures)