



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 21, 2004

Ms. SusanC. Rocha  
City Attorney  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2004-4175

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# 202629.

The City of Castroville (the "city"), which you represent, received thirty requests for information relating to city financial and policy issues.<sup>1</sup> You inform us that you are releasing some of the requested information and indicate that other requested information does not exist. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that portions of the submitted information are exempted from disclosure under sections 552.101 and 552.1175 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed

---

<sup>1</sup>As you have not submitted copies of the requests, we take our description from your brief.

<sup>2</sup>Although you also raised section 552.102, 552.103, 552.106, 552.107, 552.111, 552.136, and 552.137 as possible exceptions to disclosure, you have not indicated that any of the submitted information falls within these exceptions and have provided no arguments regarding such exceptions. We therefore assume you are no longer claiming these exceptions. *See Gov't Code § 552.301.*

statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this instance, you have not submitted to this office copies of the written requests for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). As sections 552.101 and 552.1175 can provide compelling reasons for withholding information, we will consider your arguments.

We next note that the submitted information includes a Report of Resignation or Separation of License Holder form addressed to the Texas Commission on Law Enforcement ("the commission"). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Section 1701.452 of the Occupations Code requires that a law enforcement agency submit a report to the commission regarding an officer licensed under chapter 1701 who resigns from the law enforcement agency. *See* Occ. Code § 1701.452. Section 1701.454 makes such reports, which are commonly referred to as "F-5s," confidential and provides in relevant part:

- (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. Therefore, the city must withhold the marked F-5s pursuant to section 552.101 in conjunction with section 1701.454.

We next note that the submitted records include information that is subject to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public 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 made an election under section 552.024 or section 552.1175 of the Government Code.<sup>3</sup> We

---

<sup>3</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

have reviewed the submitted documents and understand that the individuals whose personnel records are at issue were all licensed peace officers at the time the city received this request. We note, however, 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). We also note that section 552.117 does not except a peace officer's date of birth from disclosure. See ORD 658 at 4, 478 at 2 (1987), 465 at 4-5 (1987). We have marked the information that the city must withhold pursuant to section 552.117(a)(2).<sup>4</sup>

You contend that the Texas motor vehicle record information is excepted from disclosure under section 552.101. However, as the legislature enacted section 552.130 specifically to address such information, we will consider it in the context of that exception. Section 552.130 of the Government Code excepts from 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." We have marked the information that the city must withhold pursuant to section 552.130.

In summary, we have marked an F-5 form, which must be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must also withhold the information we have marked under sections 552.117 and 552.130 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

---

<sup>4</sup>Because of our ruling on this issue, we need not address your arguments regarding section 552.1175.

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).

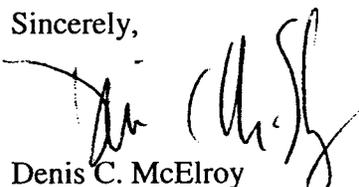
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Ref: ID# 202629

Enc. Submitted documents

c: Mr. Ray Barnes  
Barnes & Son Trucking  
606 Vienna  
Castroville, Texas 78009-5431  
(w/o enclosures)