



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2005

Mr. W. Montgomery Meitler  
Senior Attorney  
Texas Department of Family and Protective Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR2005-03317

Dear Mr. Meitler:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222251.

The Texas Department of Family and Protective Services (the "department") received a request for information related to a specified employment posting. You state you have released some of the requested information, but claim that some of the submitted information is excepted from disclosure under sections 552.130 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor's contention that the department is in violation of the procedural requirements of the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten *business* days after receiving the request. See Gov't Code § 552.301(a),

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<sup>1</sup> We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b). In addition, not later than the tenth business day after receiving the requestor's written request for information, the governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general and (2) a copy of the governmental body's written communication to the attorney general. Gov't Code § 552.301(d).

You state that the department received the present request on January 27, 2005. The department's request for a decision bears a post office mark indicating it was mailed on February 9, 2005. *See* Gov't Code § 552.308(a) (ten day deadline met if request bears post office mark indicating time within ten day period). Further, the submitted information indicates the department simultaneously sent a copy of the request for a decision to the requestor. We therefore find the department complied with the procedural requirements of section 552.301 in requesting this ruling. We now address the exceptions to disclosure you raise in your arguments.

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." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas driver's license information you have marked in the submitted documents.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. In addition, section 552.137 does not apply to a business's general e-mail or website address. The e-mail address you have marked in the submitted information is not specifically excluded by section 552.137(c). You inform us that the department has not received consent for release of this e-mail address. Therefore, the department must withhold such e-mail address in accordance with section 552.137.

The requestor also asserts she possesses a special right of access to some of the requested information as the authorized representative of a specified applicant for the employment posting at issue. Section 552.023 of the Government Code provides that an individual's authorized representative has a special right of access to information that relates to the individual when the only basis for excepting information from disclosure involves protection of the individual's privacy interest. *See* Gov't Code § 552.023. *Id.* However, the submitted sample of records does not include any information that relates to the specified applicant.

Therefore, we find that the requestor does not have a special right of access to the submitted information.<sup>2</sup>

You also request that this office issue a previous determination allowing the department to withhold Texas driver's license information under section 552.130 and e-mail addresses under section 552.137(a). With regard to the former, this ruling shall serve as a previous determination under section 552.301(a) that Texas driver's license number information, as well as information identifying the type of Texas driver's license, is excepted from disclosure pursuant to section 552.130 of the Government Code. We note, however, that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023. Moreover, because section 552.130 was enacted to protect the privacy of an individual, the protection extinguishes upon the individual's death. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). Thus, the department may not withhold a deceased person's section 552.130 information. This previous determination applies only to requested Texas driver's license number information, and information identifying the type of Texas driver's license. *See* Open Records Decision No. 673 at 7 (2001). So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to Texas driver's license number information, as well as information identifying the type of Texas driver's license, pursuant to section 552.130 of the Government Code. *See* Open Records Decision 673 at 7 (2001). Furthermore, although you also ask this office to issue a previous determination for an e-mail address of a member of the public that is provided to the department on an application for employment, we decline to issue such a previous determination at this time.

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

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<sup>2</sup> We note that the requestor has raised other issues in her submitted comments; however, we find that such comments raise issues that are outside this office's authority to address within the ruling process.

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/jev

Ref: ID# 222251

Enc. Submitted documents

c: Ms. Renee L. Fricks  
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(w/o enclosures)