



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2005

Ms. Julie Joe
Assistant County Attorney
County of Travis
P. O. Box 1748
Austin, Texas 78767

OR2005-05217

Dear Ms. Joe:

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# 225934.

The Travis County Sheriff's Office (the "sheriff") received a request for the annual reports of the Internal Affairs unit for the last three years. You inform us that some information has been released, but claim that some of the submitted information is excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You argue that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Government Code to keep such information confidential.² You do not indicate whether the individuals at issue were licensed peace officers when the sheriff received this request. Therefore, the sheriff must withhold the listed information you have marked concerning these individuals under section 552.117(a)(2) only if the individuals were licensed peace officers when the sheriff received this request. If the individuals were not licensed peace officers at the time the sheriff received the request, the listed information must be withheld under section 552.117(a)(1) if the employees made a timely request that the information be kept confidential under section 552.024.

Regardless of whether section 552.117 applies, the employees' social security numbers may be confidential under federal law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is confidential under other law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we address your arguments regarding section 552.130 of the Government Code. This section 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." As you note, section 552.130 is designed to protect individuals' privacy, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Because the information at issue pertains to a Texas motor vehicle record that was issued to a person who is now deceased, this information may not be withheld under section 552.130.

In summary, pursuant to section 552.117(a)(2), the sheriff must withhold the current and former home addresses and telephone numbers, social security numbers, and family member information of licensed peace officers employed by the sheriff. Pursuant to section 552.117(a)(1), the sheriff must withhold the same information for individuals who were not licensed peace officers at the time this request was received but are current or

²The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

former employees or officials who elected, prior to the receipt of this request, to keep such information confidential. Social security numbers that are not excepted from disclosure under section 552.117 may be confidential under federal law. The remaining 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, 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); *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 'José Vela III', with a long horizontal flourish extending to the right.

José Vela III
Drafting Attorney
Open Records Division

JV/krl

Ref: ID# 225934

Enc. Submitted documents

c: Mr. Mitch Hall
10811-A Topperwein Dr.
Austin, Texas 78758
(w/o enclosures)