



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2005

Mr. D. Armstrong
Office Manager
Hood County Sheriff's Office
400 North Gordon
Granbury, Texas 76048

OR2005-06780

Dear Mr. Armstrong:

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# 229171.

Hood County (the "county") received a request for all of the requestor's personnel files created while he was an employee of the county Sheriff's Office (the "sheriff's office"), and for all information related to an internal affairs investigation concerning the requestor conducted by the sheriff's office. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code, and you indicate that portions of the submitted information are excepted under section 552.101 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that, while you have submitted information related to the internal affairs investigation, you have not submitted any other information that would be maintained in the requestor's personnel file for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental

¹Although you also indicate that section 552.111 of the Government Code may be applicable, because you have provided no argument for its applicability to the information at issue, you have waived that exception. See Gov't Code §§ 552.007, .301(e)(1)(A), .302; Open Records Decision No. 665 at 2 n.5 (2000).

body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.108(b)(2) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” § 552.108(b)(2). But section 552.108 is generally not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Comyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). The submitted information consists of an internal administrative investigation involving the requestor, who was, until recently, employed by the sheriff’s office as a deputy sheriff. You do not inform us that the internal affairs investigation resulted in a criminal investigation by the sheriff’s office or a criminal prosecution. After review of your arguments and the submitted information, we conclude you have not established that the information pertains to a criminal investigation involving the deputy. We therefore conclude that the county may not withhold the submitted information under section 552.108.

We note, however, that the submitted information contains Texas driver’s license and license plate information. Section 552.130 of the Government Code excepts information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130.² Thus, pursuant to section 552.130, the county must withhold the information that we have marked. However, because section 552.130 is intended to protect an individual’s privacy, the requestor has a special right of access to his driver’s license and license plate numbers pursuant to section 552.023 of the Government Code. *See id.* § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect person’s privacy interest as subject of the information).

We also note that the submitted information contains social security numbers. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the county

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

must withhold the marked social security numbers contained in the submitted information under section 552.147.⁴ However, like section 552.130, because section 552.147 is intended to protect the privacy of the individual whose social security number is at issue, the requestor has a special right of access to his social security number pursuant to section 552.023 of the Government Code. *See id.* § 552.023.

In summary, the county must withhold the marked drivers license numbers under section 552.130 and the marked social security numbers under section 552.147. The remaining information must be released to the requestor.⁵

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

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁵We note that some of the documents contain other confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to this additional information as well. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the county receives a future request for this information from an individual other than the requestor or his authorized representative, the county should submit the information to this office and request a ruling.

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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 229171

Enc. Submitted documents

c: Mr. Benny Cristiantielli
c/o Mr. D. Armstrong
Office Manager
Hood County Sheriff's Office
400 North Gordon
Granbury, Texas 76048
(w/o enclosures)