ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2005

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002

OR2005-10614

Dear Ms. Chang:

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# 236869.

The City of Houston (the "city") received a request for all statements and photographs relating to a specified automobile accident involving a city employee. You inform us that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes completed reports made of, for, or by the city. Section 552.022 of the Government Code provides in relevant part:

> the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1). The submitted reports are expressly public under section 552.022(a)(1) and may only be withheld if confidential under other law or excepted from disclosure under section 552.108. Although you argue that the submitted information is excepted under section 552.103 of the Government Code, section 552.103 is a

discretionary exception to disclosure and is not "other law" for purposes of section 552.022.[1] Thus, the completed reports may not be withheld pursuant to this exception.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. You do not inform us whether the city personnel at issue timely elected to keep the information confidential. We therefore determine that if the individual at issue timely elected to keep such information confidential pursuant to section 552.024, the city must withhold the information you have highlighted in the submitted documents pursuant to section 552.117(a)(1). If, however, the city personnel at issue did not timely elect to keep the information confidential, the city may not withhold this information under section 552.117(a)(1).

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. The city must withhold the Texas motor vehicle information you have highlighted and the information we have marked under section 552.130.

In summary, the city must withhold the Texas motor vehicle information under section 552.130 and the employee's personal information under section 552.117 if the individual at issue timely elected to keep such information confidential pursuant to section 552.024. The remaining information must be released to the requestor.

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).

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[1]Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See* Open Records Decision No. 473 (1987) (governmental body may waive statutory predecessor to section 552.103); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions do not constitute "other law" that makes information confidential.

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 Office of the Attorney General 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. 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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jpa

Ref: ID# 236869

Enc. Submitted documents

c: Mr. Harrison R. Fisher, Sr.
2646 South Loop West, Suite 260
Houston, Texas 77054
(w/o enclosures)