



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 14, 2006

Mr. Ron G. MacFarlane, Jr.  
Dealey, Zimmerman, Clark, Malouf & MacFarlane, P.C.  
3131 Turtle Creek Boulevard, Suite 1201  
Dallas, Texas 75219-5415

OR2006-09144

Dear Mr. MacFarlane:

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# 256592.

The Cedar Hill Police Department (the "department"), which you represent, received a request for the personnel records of a named police officer, including audio or video recordings relating to an investigation of the named officer, and any police records where the named officer is listed as a suspect or perpetrator. You claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.117(a)(2) excepts from disclosure the present and former home addresses and personal telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(2). We note, however, that the protections of section 552.117 of the Government Code only apply to information that the governmental body holds in its capacity as an employer. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also id.* § 552.024 (establishing election process for section 552.117). You state that the named individual is a law enforcement officer, but do not indicate that the officer at issue was ever employed by the department.

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<sup>1</sup>"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

Therefore, you have not demonstrated the applicability of section 552.117 to the submitted information.

However, the peace officer's home address, home telephone number, and social security number may be excepted under section 552.1175 of the Government Code. This exception provides in relevant part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). Thus, pursuant to section 552.1175(a), the department must withhold the home telephone number, home address, and social security number of the named peace officer under section 552.1175 if the peace officer elects to restrict access to the information in accordance with section 552.1175(b).

We also note that some of the submitted information is subject to section 552.130 of the Government Code, which 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. Thus, the department must withhold the Texas drivers' license information we have marked in accordance with section 552.130.

Finally, if the peace officer did not elect to restrict access to his personal information under section 552.1175, his social security number remains subject to section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, if section 552.1175 is

inapplicable, the department must withhold the social security number under section 552.147.<sup>2</sup>

In summary, the department must withhold the home telephone number, home address, and social security number of the named peace officer under section 552.1175 if the peace officer elects to restrict access to the information in accordance with section 552.1175(b). The department must withhold the Texas drivers' license information we have marked in accordance with section 552.130. If section 552.1175 is inapplicable, the department must withhold the social security number under section 552.147. 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

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<sup>2</sup>We 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.

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,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 256592

Enc. Submitted documents

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(w/o enclosures)