



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2007

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
1900 Main Third Floor
Houston, Texas 77002

OR2007-15845

Dear Ms. Alexander:

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# 296652.

The Metropolitan Transit Authority of Harris County (the "authority") received a request for lists of (1) all employees of the authority and members of their families for whom the authority has purchased Q Cards, including the date of issuance; and (2) all employees of the authority and their positions, current salaries, and hire dates. You state that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note, and you acknowledge, that the authority did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Thus, because the authority did not comply with section 552.301, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential

by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.117 of the Government Code can provide a compelling reason for non-disclosure, we will address your arguments.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You have submitted a list of employees of the authority and their spouses. You seek to withhold the spouses' names under section 552.117. You indicate that the authority employs peace officers. However, you do not state whether or to what extent any of the listed employees are peace officers. Nevertheless, to the extent that the listed employees are peace officers, as defined by article 2.12 of the Code of Criminal Procedure, we agree that the authority must withhold the names of their spouses under section 552.117(a)(2).

You also raise section 552.117(a)(1), which excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of an official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an official or employee who did not timely request under section 552.024 that the information be kept confidential.

You also seek to withhold the names of the listed employees' spouses under section 552.117(a)(1). You have submitted a copy of an election form that the authority requires its employees to complete pursuant to sections 552.117 and 552.024. We note that the submitted election form only permits an employee to request confidentiality for his or her home address and telephone number. The form provides no means for an employee to request that his or her family member information be withheld from disclosure under section 552.117(a)(1). You also state, however, that "[f]orms are also available for individual employees to protect the privacy of family information." Based on this representation, we conclude that to the extent that the listed employees timely requested confidentiality for their family member information, the names of their spouses must be withheld from disclosure under section 552.117(a)(1). To the extent that the listed employees did not timely request confidentiality for their family member information, the authority may not withhold their spouses' names under section 552.117(a)(1).

In summary: (1) the authority must withhold the names of the spouses of any of the listed employees who are peace officers under section 552.117(a)(2) of the Government Code; and (2) to the extent that the listed employees timely requested confidentiality for their family member information, the names of their spouses must be withheld under section 552.117(a)(1). 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

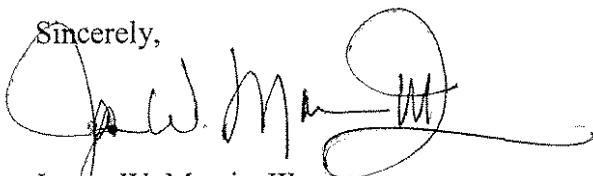
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 296652

Enc: Submitted documents

c: Mr. Steve Bivens
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(w/o enclosures)