



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 18, 2007

Ms. Paula Alexander
Office of General Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2007-16689

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# 297600.

The Metropolitan Transit Authority (the "Metro") received a request for "the number of boardings attributed to [Metro's] 3000 family Metro passes ("Q card")." You claim that the requested 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.

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 section 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 Metro employee family members who were issued a Q card, as well as boarding information for each Q card. You indicate that Metro employs peace officers. However, you do not state whether or to what extent any of the listed family members are those of peace officers. Nevertheless, to the extent that the employees at issue are peace officers, as defined by article 2.12 of the Code of Criminal Procedure, Metro must withhold the listed family member names under section 552.117(a)(2). However, the remaining submitted information must be released.

Metro also raises 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 have submitted a copy of an election form that Metro 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). Thus, the employees at issue did not request confidentiality for their family member information. Therefore, Metro may not withhold the listed family member names under section 552.117(a)(1).

In summary, Metro must withhold the family member information of any of the employees at issue who are peace officers under section 552.117(a)(2) of the Government Code. 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 297600

Enc. Submitted documents

c: Mr. Wayne Dolcefino
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(w/o enclosures)