



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2008

Ms. Kerry O'Brien
Assistant City Attorney
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2008-00234

Dear Ms O'Brien:

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# 298974.

The City of Burnet (the "city") received a request for any information pertaining to the solicitation/hiring for the Chief of Police position. You state that you will release most of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). The city must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

We note that some of the submitted information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code.² Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

We also note that some of the remaining information may be excepted under section 552.1175 of the Government Code. Section 552.1175 provides in pertinent 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.

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 552.1175 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

Gov't Code § 552.1175. Thus, to the extent that the information we have marked relates to licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the city must withhold this information under section 552.1175. If the city does not receive the appropriate elections, this information may not be withheld under section 552.1175.

You claim that the information in Exhibits C and D is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). The city must withhold the Texas driver's license information that we have marked under section 552.130 of the Government Code. However, some of the information in Exhibits C and D that you have marked is not excepted under section 552.130 of the Government Code and therefore must be released.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work email address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the information you have marked under section 552.137 of the Government Code, except as we have marked otherwise.

Finally, you claim that some of the remaining information is excepted under 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. We agree that the city may withhold social security numbers under section 552.147 of the Government Code.³

³We 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.

In summary, the city must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent that the information we have marked relates to licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the city must withhold this information under section 552.1175 of the Government Code. The city must withhold the Texas driver's license information that we have marked under section 552.130 of the Government Code. The city must withhold the information you have marked under section 552.137 of the Government Code, except as we have marked otherwise. The city may withhold social security numbers under section 552.147 of the Government Code. 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 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 "Henisha D. Anderson". The signature is fluid and cursive, with a large, stylized initial "H".

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 298974

Enc. Submitted documents

c: Mr. Mark Spears
c/o Ms. Kerry O'Brien
Knight & Partners
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Austin, Texas 78752
(w/o enclosures)