



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2008

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-01928

Dear Ms. Stephens:

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# 302075.

The City of San Antonio (the "city") received a request for information regarding all complaints and disciplinary action taken against a named officer from 2005 through 2007. You state you have redacted social security numbers from the submitted information pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147 (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting decision from this office under the Act). You also state you have redacted the home addresses, home telephone numbers, and family member information of police officers pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001).¹ You claim that portions of the submitted

¹*See* Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under section 552.117(a)(2)); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

information are excepted from disclosure under section 552.130 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the city has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 (1977). Because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider your argument regarding this exception.

Next, we note that the submitted information includes ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.³ *Id.* In this instance, the requestor has not provided the city with two of the three requisite pieces of information. Therefore, the submitted ST-3 report forms, which we have marked, must be withheld under section 550.065(b) of the Transportation Code.

You assert that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides that 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. In

²Although the city asserts that the requested information is excepted from disclosure under section 552.136 of the Government Code in conjunction with section 552.101, we note that the exceptions in the Act are not laws that makes information confidential for purposes of section 552.101 of the Government Code.

³Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle record information that we have marked.

In summary, the city must withhold the submitted accident report forms pursuant to section 550.065(b) of the Government Code. The city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 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).

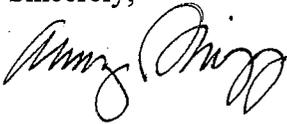
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "Amy Shipp". The signature is fluid and cursive, with the first name "Amy" and the last name "Shipp" clearly distinguishable.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 302075

Enc. Submitted documents

c: Mr. John Joseph Garcia
13750 San Pedro, Suite 290
San Antonio, Texas 78232
(w/o enclosures)