



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 15, 2008

Ms. Josefina J. Brostrom
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2008-02167

Dear Ms. Brostrom:

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# 303756.

The El Paso County Sheriff's Office (the "sheriff") received a request for "copies of any and all Internal Affairs Division records, files, reports, complaints and outcomes" pertaining to two named sheriff's deputies. You state that you have released some of the requested information but ask whether a portion of the submitted information is excepted from disclosure under section 550.065 of the Transportation Code and section 611.002 of the Health and Safety Code.¹ We have considered your arguments 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." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. The submitted information includes ST-3 and CRB-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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, a governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more pieces of information specified by the statute. *Id.* In this instance, as you note, the requestor has not provided the

¹We understand you to raise section 550.065 of the Transportation Code and section 611.002 of the Health and Safety Code in conjunction with section 552.101 of the Government Code.

sheriff with two of the three requisite pieces of information. Therefore, the submitted ST-3 and CRB-3 reports you have marked in the submitted information, as well as the additional information we have marked, must be withheld under section 550.065 of the Transportation Code in conjunction with section 552.101 of the Government Code.

Next, you argue that some of the remaining documents constitute mental health record information. Section 552.101 encompasses section 611.002 of the Health and Safety Code, which provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See Open Records Decision No. 565 (1990)*. Upon review, we find that a portion of the submitted information, which we have marked, is confidential under section 611.002 of the Health and Safety Code. As we have no indication the requestor has a right of access to this information, it must be withheld under section 552.101 of the Government Code. None of the remaining information is confidential under 611.002.

Next, we address the applicability of section 552.117(a)(2) of the Government Code, which 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.² Gov't Code § 552.117(a)(2). We understand the personal information we have marked belongs to licensed peace officers. Therefore, based on our review, we find that the sheriff must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.³

Finally, we note that section 552.130 of the Government Code 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." *Id.* § 552.130. Section 552.130 is not applicable to out-of-state motor vehicle

²"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

³The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

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

To summarize, the submitted ST-3 and CRB-3 reports you have marked in the submitted information, as well as the additional information we have marked, must be withheld under section 550.065 of the Transportation Code in conjunction with section 552.101. The information we have marked under section 611.002 of the Health and Safety Code must be withheld under section 552.101. The personal information of licensed peace officers we have marked must be withheld under section 552.117(a)(2). The Texas motor vehicle record information we have marked must be withheld under section 552.130. The remaining submitted 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jb

Ref: ID# 303756

Enc: Submitted documents

cc: Mr. Stuart L. Leeds
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(w/o enclosures)