



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2008

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2008-02381

Dear Mr. Rodriguez:

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# 302801.

The El Paso Police Department (the "department") received a request for information related to a shooting review investigation. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made by the department, which is made expressly public by section 552.022 and must be released, unless it is excepted from disclosure under section 552.108 or confidential under other law. The department does not raise section 552.108 as an exception to disclosure. Although you claim that the submitted information may be withheld under section 552.103, this section is a discretionary exception and not "other law" for purposes of section 552.022. See

Dallas Area Rapid Transit v. Dallas Morning News, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive section 552.103). Therefore, the department may not withhold the submitted information under section 552.103 of the Government Code.

However, we note that some of the submitted information is excepted under section 552.117 of the Government Code.¹ Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.² We note that section 552.117(a)(2) is applicable to a peace officer's cellular phone and pager number only if the cellular phone or pager service is paid for by the officer with his or her own funds. See Open Records Decision No. 670 at 6 (2001). We have marked the information that must be withheld under section 552.117(a)(2). The department also must withhold the cellular telephone numbers contained in the audio recording under section 552.117(a)(2), if the officers at issue, rather than a governmental entity, pay for these services. See ORD 670 at 6; see also Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). However, if the department lacks the technical capability to redact this information from the audio recording, it must withhold this recording in its entirety. See Open Records Decision No. 364 (1983).

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." Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state driver's license or motor vehicle record information. We also note that section 552.130 protects the privacy interest of the individual, and because that right of privacy is purely personal, it lapses upon death. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, pursuant to section 552.130, the department must withhold those portions of the information we have marked that reveal Texas driver's license numbers of living individuals or Texas motor vehicle record information pertaining to vehicles in which any living individual has an ownership interest. The department may not withhold

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 or section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

any Texas motor vehicle information pertaining to a vehicle in which no living individual has an ownership interest. Furthermore, if the requestor's client has an ownership interest in any vehicle to which the license plate or vehicle identification numbers pertain, then the requestor has a right of access to the license plate and vehicle identification numbers under section 552.023.³ Any information to which the requestor has a right of access under section 552.023 may not be withheld from the requestor under section 552.130. *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories are not implicated when an individual asks a governmental body to provide him with information concerning himself). The department must also withhold this Texas motor vehicle information in the submitted audio and video recordings under section 552.130, except for information pertaining to a vehicle in which no living individual has an ownership interest, or to which the requestor has a right of access. However, if the department lacks the technical capability to redact this information from the audio or video recordings, it must withhold the recording at issue in its entirety. *See* ORD 364.

In summary, the department must withhold the information we have marked under sections 552.117 and 552.130 of the Government Code, except for information pertaining to a vehicle in which no living individual has an ownership interest, or to which the requestor has a right of access. The department also must withhold the cellular telephone numbers contained in the audio recording under section 552.117(a)(2), if the officers at issue, rather than a governmental entity, pay for these services. The department must also withhold the Texas motor vehicle information in the submitted audio and video recordings under section 552.130, except for information pertaining to a vehicle in which no living individual has an ownership interest, or to which the requestor has a right of access. However, if the department lacks the technical capability to redact this information from the audio or video recordings, it must withhold the recording at issue in its entirety. The remaining submitted information must be released to the requestor.⁴

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

³Under section 552.023(a) of the Government Code, "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

⁴We 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.

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).

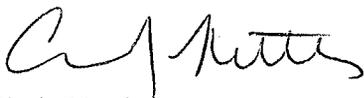
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 302801

Enc. Submitted documents

c: Mr. Dennis L. Richard
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(w/o enclosures)