



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 5, 2008

Ms. Susan Camp-lee
Sheets & Crossfield P. C.
309 East Main Street
Round Rock, Texas 78664

OR2008-07656

Dear Ms. Camp-Lee:

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# 312256.

The Round Rock Police Department (the "department") received a request for several types of information pertaining to a named police officer. You claim that portions of the information requested are excepted from disclosure under sections 552.117 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, we note that the submitted information includes an F-5 Report of Separation of Licensee. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes.³ *Id.* § 552.101. Section 1701.452 of the Occupations Code requires that a law enforcement agency submit a report to the Texas Commission on Law Enforcement Officer Standards and Education (the "commission") regarding an officer licensed under chapter 1701 who resigns or is terminated

¹We note that in your letter dated April 9, 2008 you have withdrawn your assertion under section 552.101 of the Government Code. Further, although you did not timely raise section 552.117 of the Government Code, this provision constitutes a compelling reason to withhold information. We will therefore consider your argument under this exception. *See* Gov't Code §§ 552.301, 302.

²To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

by a law enforcement agency. *See* Occ. Code § 1701.452. Section 1701.454 makes such reports, which are commonly referred to as “F-5s,” confidential and provides in relevant part the following:

A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated instances of excessive force or violations of the law other than traffic offenses.

Id. § 1701.454(a). Upon review, the submitted F-5 form indicates that the officer named in the request resigned in good standing with the department. Accordingly, this form is confidential under section 1701.454, and the department must withhold it under section 552.101 of the Government Code. As our ruling on this information is dispositive, we need not address your argument under section 552.117.

Section 552.137 of the Government Code 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). The e-mail addresses in the remaining information are not specifically excluded by section 552.137(c). Therefore, unless it receives consent for their release, the e-mail addresses we have marked must be withheld under section 552.137. *See id.* § 552.137(b).

In summary, the department must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. Unless it receives consent for their release, the department must also withhold the e-mail addresses we have marked under section 552.137 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 312256

Enc. Submitted documents

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(w/o enclosures)