



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2008

Mr. Brad Young
Bickerstaff, Heath, Delgado Acosta LLP
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2008-15344

Dear Mr. Young:

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# 327351.

The Bee Cave Police Department (the "department"), which you represent, received a request for all public information concerning two named police officers. You claim that a portion of the responsive information is excepted from disclosure under sections 552.101, 552.117, 552.130, 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. You contend that the submitted L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms are confidential under section 1701.306 of the Occupations Code, which provides:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The department must withhold the submitted L-2 and L-3 forms, which you have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.117(a)(2) of the Government Code excepts the current and former home address and telephone number, social security number, and the family member information of a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). We note that section 552.117(a)(2) encompasses peace officer's personal cell telephone and pager numbers if the officer personally pays for the cell or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). This section applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. The department must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code.¹

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. Accordingly, with the exception of the information we have marked for release, the department must withhold the Texas motor vehicle record information you have marked pursuant to section 552.130 of the Government Code.

We note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the

¹As our ruling is dispositive for this information, we do not address your argument to withhold the officers' social security numbers under section 552.147.

governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 at 8-9 (1990).*

In summary, the department must withhold the L-2 and L-3 forms you have marked in conjunction with section 1701.306 of the Occupations Code; the information you have marked, and the additional information we have marked, under section 552.117 of the Government Code, and the Texas motor vehicle record information you have marked, except where we have marked for release, under section 552.130 of the Government Code. The remaining information must be released. Any information that is protected by copyright must be released in accordance with copyright law.

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). If the governmental body does not file suit over 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).

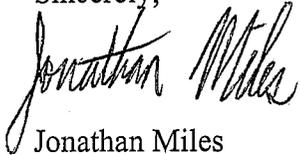
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 327351

Enc. Submitted documents

c: Mr. Tracy D. Cluck
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(w/o enclosures)