



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 14, 2008

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2008-15688

Dear Mr. Swope:

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# 327867.

The Office of Harris County Constable, Precinct 5 (the "constable") received a request for seventeen categories of information related to a named employee. You state that you are providing some of the requested information to the requestor. You also state that you have no information responsive to a portion of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.117 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹ We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

² Although you raise section 552.101 of the Government Code as an exception to the disclosure of the requested information, you have provided no arguments regarding the applicability of this section. Thus, we assume that you no longer urge this section. *See* Gov't Code §§ 552.301(b), (e), .302. We also note that although you raise section 552.1175 of the Government Code, section 552.117 of the Government Code is the proper exception to raise in this instance, as the peace officer at issue is employed by constable's office.

Initially, we address the constable's argument that a portion of the request requires the constable to answer questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We therefore assume the constable has made a good faith effort to locate any information that would be responsive to the requestor's inquiries in the present request.

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.³ You inform us the individual at issue is a peace officer employed by the constable. Therefore, the constable must withhold the personal information you have marked under section 552.117(a)(2) of the Government Code.

You also raise section 552.130 of the Government Code. This section 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." Gov't Code § 552.130(a)(1). The constable must withhold the information you have marked under section 552.130.

In summary, the constable must withhold the information you have marked under sections 552.117(a)(2) and 552.130 of the Government Code. The remaining information must be released.

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).

³ "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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 'Chris Schulz', written over a horizontal line.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/ma

Ref: ID# 327867

Enc. Submitted documents

cc: Requestor
(w/o enclosures)