



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2008

Mr. Jason D. King
Akers & Boulware-Wells, LLP
816 Congress Avenue Suite 1725
Austin, Texas 78701

OR2008-16157

Dear Mr. King:

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# 332790.

The Balch Springs Police Department (the "department"), which you represent, received a request for information relating to a former police officer, including his full name and contact information. You claim that the officer's home address and personal cell telephone number are excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. In this instance, the requested information concerns an officer who is no longer employed by the department. Nevertheless, if the former officer is still a peace officer as defined by article 2.12, then the department must withhold his home address and personal cell phone number under section 552.117(a)(2). *See* Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) applicable to peace officer's cell telephone and pager numbers if officer pays for cell phone or pager service).

If the former officer is no longer a peace officer, then the department may be required to withhold his home address and cell phone number under section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, the department must withhold the former officer's home address and cell phone number under section 552.117(a)(1) to the extent that he timely requested confidentiality for that information under section 552.024.

In summary: (1) the department must withhold the former officer's home address and cell phone number under section 552.117(a)(2) of the Government Code if he is still a peace officer as defined by article 2.12 of the Code of Criminal Procedure; and (2) the former officer's address and cell phone number must be withheld under section 552.117(a)(1) to the extent that he timely requested confidentiality for that information under section 552.024 of the Government Code. To the extent that the former officer's address and cell phone number are not excepted from disclosure under section 552.117(a)(2) or section 552.117(a)(1), the information must be released. As we are able to make these determinations, we need not address your other exception to disclosure.

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).

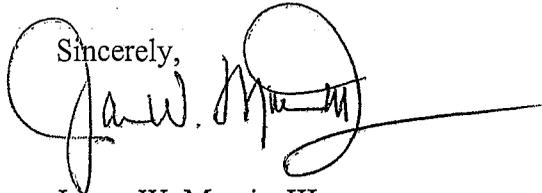
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 332790

Enc: Submitted document

c: Requestor
(w/o enclosures)