



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2011

Mr. Peter Gruning
Duvall, Gruning & Dietz, P.L.L.C.
112 North LBJ Drive
San Marcos, Texas 78666

OR2011-13420

Dear Mr. Gruning:

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# 430154.

The Lockhart Police Department (the "department") received a request for three specified reports pertaining to a named individual. You state the department has redacted a social security number pursuant to section 552.147 of the Government Code and a Texas driver's license number under section 552.130 as permitted by Open Records Decision No. 684 (2009).¹ You claim portions of the remaining submitted information are excepted from

¹Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

disclosure under sections 552.102 and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Thus, *Texas Comptroller* applies only to a public employee’s birth date maintained by the employer in an employment context. In this instance, the department is not holding the submitted law enforcement records in an employment context. Therefore, we conclude the department may not withhold the information you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)(1)). 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. In this instance, the named individual is not a current or former employee of the department. Further, the named individual’s information is contained in a law enforcement record. Accordingly, this information is not held by the department in its capacity as an employer. Therefore, the department may not withhold the information you have marked under section 552.117(a)(1). As you raise no further exceptions to disclosure, the department must release the remaining submitted information to the requestor.³

²Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Accordingly, we find the department has waived its claim under this exception. *See* Gov’t Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

³We note the remaining information includes the requestor’s Texas driver’s license number, which the department would ordinarily be required to withhold under section 552.130 of the Government Code, and the requestor’s social security number, which the department would ordinarily be able to withhold under section 552.147 of the Government Code. Because sections 552.130 and 552.147 protect personal privacy, the requestor has a special right of access to her own Texas driver’s license number and social security number. *See* Gov’t Code § 552.023(a). However, if the department receives another request for these same records from

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 430154

Enc. Submitted documents

c: Requestor
(w/o enclosures)

a person other than one with a right of access under section 552.023, the department is authorized to withhold the requestor's Texas driver's license number pursuant to section 552.130 and the requestor's social security number under section 552.147(b) without the necessity of requesting an attorney general decision.