



Office of the Attorney General
State of Texas

January 24, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR97-0144

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 103088 and ID# 103277.

The Texas Department of Criminal Justice (the "department") received requests for all documents pertaining to the requestors. You have submitted the requested documents to this office for review. You assert that an internal memorandum is excepted from disclosure pursuant to section 552.107 of the Government Code. You contend that portions of the other documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

The internal memorandum at issue is from a department attorney to a department employee and pertains to an "EEO directed investigation". You claim that this memorandum is protected by the attorney-client privilege under section 552.107 of the Government Code. Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. *Id.* at 7-8. Section 552.107(1) does not, however, protect purely factual information. *Id.* The memorandum contains both purely factual information and attorney advice or opinion. The purely factual information must be released to the requestor. The attorney advice or opinion, which we have marked, may be withheld from disclosure pursuant to section 552.107.

As for the other submitted documents, we note that they contain some information that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(1)(A), together with section 552.024, permits a government employee to choose whether to allow public access to information that reveals whether or not he or she has family members. Thus, the department must not release the family member information of any employee who, before this request was made,¹ asked that this information be kept confidential. We have marked a sample of information that may be excepted from disclosure under section 552.117.

Finally, you claim that portions of the submitted documents implicate the privacy rights of the requestors. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy.² However, the information at issue concerns the requestors. Notwithstanding the fact that information about each requestor may be excepted from disclosure to the public in conjunction with each requestor's common-law right to privacy, each requestor has a special right of access to the information concerning him or her. Gov't Code § 552.023. Therefore, information concerning one requestor should be de-identified before being released to the other requestor, but each requestor is entitled to receive information concerning him or her.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

¹Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Therefore, the department may only withhold employee information under section 552.117 if the employee who made a request for confidentiality under section 552.024 did so before a request for this information was made.

²For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

Mr. Leonard W. Peck, Jr. - Page 3

Ref: ID# 103277

Enclosures: Submitted documents

cc: Mr. Jim Glass, CAFO
Ellis Unit
Huntsville, Texas 77342
(w/o enclosures)

