



December 7, 1999

Mr. James T. Jeffrey, Jr.  
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Attorneys at Law  
1306 West Abram Street  
Arlington, Texas 76013-1703

OR99-3553

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130251.

The Town of Pantego (the "town") received a request for information regarding a former police officer. You seek to withhold some of the information responsive to the request under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.

We note at the outset that you have not submitted to this office a copy of the written request for information as required by section 552.301(e)(1)(B). Section 552.302 provides that failure to comply with section 552.301 results in a presumption that the requested information is public and that the information must be released unless there is a compelling reason for withholding it. Since confidentiality is a compelling reason for withholding information, and all of the exceptions you claim relate to confidential information, we will consider your arguments for withholding. *See, e.g.*, Open Records Decision No. 150 (1977).

Section 552.101 requires withholding, *inter alia*, information made confidential by statute or by judicial decision. Section 552.101 incorporates common-law privacy protection. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In our opinion, much of the information for which you claim common-law privacy protection is not so protected and must be released. However, common-law privacy protects personal financial information of governmental employees where the information does not relate to transactions with the government. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked

personal financial information in the submitted records which must be withheld under common-law privacy.<sup>1</sup>

Section 159.002(b) of the Occupations Code provides:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this chapter.

We have marked the documents that you must withhold pursuant to section 159.002(b).

Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked CHRI which must be withheld under these provisions.

The polygraph results included in the submitted information are made confidential under section 1703.306 of the Occupations Code and must be withheld. We have also marked federal tax information which is confidential under federal law and must be withheld. *See* 26 U.S.C. § 6103(a), 8 U.S.C § 1324.

Section 552.117(2) of the Government Code requires withholding certain information pertaining to a current or former peace officer: the home address, home telephone number, social security number, and information that reveals whether the individual has family members. We have marked information which must be withheld under these provisions.

Some of the submitted information is subject to section 552.130 of the Government Code, which provides in relevant part as follows:

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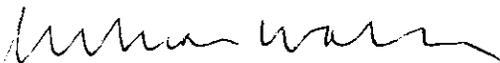
<sup>1</sup>The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Since we have addressed your privacy concerns under section 552.101, we need not separately address those claims under section 552.102.

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 130251

Encl. Marked documents

cc: Mr. R. G. Harrell  
Editor  
Coppell Morning News  
548 West Oak Grove  
Coppell, Texas 75019  
(w/o enclosures)

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked information which must be withheld under section 552.130.

Finally, you claim that education records included in the submitted information are protected under section 552.026 which incorporates the protections of the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. §1232g. FERPA makes confidential various education records in the hands of an educational agency or institution. The town is not an educational agency or institution subject to FERPA. Therefore, the records in question may not be withheld under that statute and must be released.

Except as noted above, you must release the information you submitted as responsive to the request.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental