



December 30, 1999

Mr. Lance Vanzant
Hayes, Coffey & Berry
1710 Westminster
P.O. Box 50149
Denton, Texas 76206

OR99-3816

Dear Mr. Vanzant:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131224.

The Town of Trophy Club (the "town"), which you represent, received a request for the personnel records of a named employee and a report made on October 28, 1999 regarding a certain address. You advise the town has released all information responsive to the request, except portions of the personnel file of the named employee. You have provided for our review the personnel file documents, labeled "A-2" through "A-18," and you have marked certain information on those documents, which you assert is excepted from public disclosure under sections 552.102 and 552.117 of the Government Code. We have reviewed the information you have submitted and considered the exceptions you assert.

Section 552.117 of the Government Code, in relevant part, provides:

Information is excepted from the [public disclosure] requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section

51.212, Education Code, regardless of whether the officer complies with Section 552.024[.]

Section 552.117(1) requires you to withhold information pertaining to a current or former employee or official who requested that this information be kept confidential under section 552.024. Information may not be withheld under 552.117(1) if the current or former employee elected non-disclosure after this request for information was made. Open Records Decision No. 622 (1994). Exhibit "A-19" indicates the named employee elected non-disclosure under section 552.024 prior to the present request for information. You must therefore redact the home address, home telephone number, social security number, and information that reveals whether the named employee has family members. We agree with your markings under section 552.117.

Section 552.102 excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. In applying this standard, this office has found that section 552.102 does not except from disclosure:

[D]ates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job preferences or ability; and *birth dates, height, [and] weight*. *See* Open Records Decision No. 455 (1987); *see also* Open Records Decision Nos. 470, 467; 444 (1986); 421 (1984); 405 (1983).

Open Records Decision No. 626 at 2 (1994) (emphasis added). We do not agree the date of birth information you have marked for redaction is excepted from public disclosure, nor do we find the named employee's height, weight, or the health-related comments on exhibit "A-11" to be excepted from public disclosure. The town must therefore release this information.

We note exhibit "A-10" contains motor vehicle record information, which you have marked as excepted from disclosure under section 552.102. Section 552.130 of the Public Information Act governs the release and use of motor vehicle record information. Section 552.130 provides:

(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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, you must redact from exhibit "A-10" the motor vehicle record information you have marked.

Finally, you have marked for redaction information from exhibit "A-7" as constituting "information not requested." We note the request, in part, seeks the "personnel records" of the named employee. To the extent the information you have marked is not responsive to a request for the personnel records of the named employee, we agree the information need not 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.

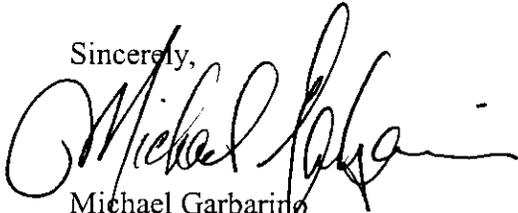
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must 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 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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 131224

Encl. Submitted documents

cc: Ms. Carolyn Jaska
#5 Salida
Trophy Club, Texas 76262
(w/o enclosures)