OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 7, 2000

Ms. Tracy A. Dargan, Esq.
Carrington & Dargan
220 Echols Street
P.O. Box 4155
Prairie View, Texas 77446

OR2000-0270A

Dear Ms. Dargan:

You ask this office to examine Open Records Letter No. 2000-0270 (2000) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133809.

The City of Hempstead Police Department (the "department") received a request for a specified offense report as well as the personnel file of named department employees. In your original request for a decision in this matter, you claimed that some of the personnel information was protected by sections 552.102 and 552.117 of the Government Code, and that the investigation report was protected from disclosure by section 552.108 of the Government Code. In Open Records Letter No. 2000-0270 (2000) we found that you could withhold the requested report, except for basic information, under section 552.108. We also stated, however, that "[the city had] not submitted the employment files or raised an objection to the release of this information. We therefore assume that this information has been released." You ask this office to examine Open Records Letter No. 2000-0270 (2000) in light of your contention that this office mistakenly found that the city did not provide this office with the requested personnel file information that you wish to withhold. Where this office determines that a factual error is made when determining a governmental body's timeliness in submitting required information in the decision process under section 552.301, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

You have informed this office that you did submit the personnel information on December 1, 1999. We have reviewed our records and agree that you did indeed timely submit on December 1, 1999 the personnel information you seek to withhold. Consequently, we will examine Open Records Letter No. 2000-0270 (2000) to the extent that it involves the

requested personnel information. You should continue to rely upon Open Records Letter No. 2000-0270 (2000) for the requested offense report. You have submitted documents concerning two of the named employees that you seek to withhold under sections 552.102 and 552.117 of the Government Code.

Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Public Information Act.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

We have examined the submitted documents and do not find that any of this information is protected by a right of privacy. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees; public employee's job performance does not generally constitute his private affairs); 423 at 2 (1984) (scope of public employee privacy is narrow); *see* Open Records Decision Nos. 506 (1988) (public officials and employees have a minimal expectation of privacy), 212 (constitutional privacy rights of public officials are of a very limited scope). You may not, therefore, withhold the submitted information under section 552.102.

Section 552.117 of the Government Code provides that information may be withheld if it is:

> information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:
>
> * * *
>
> (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.

You must withhold, under section 552.117(2), the peace officer's home address, home telephone number, social security number, and information revealing whether the officer has family members. Code Crim. Proc. art. 2.12; Open Records Decision Nos. 532 (1989), 530 (1989). We have marked two documents that you must withhold in their entirety and another portion of a document that must be withheld under section 552.117. The remaining information must 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.

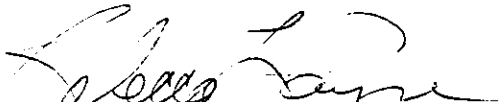
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Rebecca L. Payne
Assistant Attorney General
Chief, Open Records Division

RLP/JDB/ch

Ref: ID# 133809

Encl. Marked documents

cc: Ms. R. Jeanette Parham
916 Wilkins
Hempstead, Texas 77445
(w/o enclosures)