



February 9, 2000

Ms. Diana Adams
Assistant Criminal District Attorney
Waller County
836 Austin Street, Suite 105
Hempstead, Texas 77445

OR2000-0479

Dear Ms. Adams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132050.

The Waller County Sheriff's Department (the "department") received a request from an attorney for all offense reports of his named client, as well as the personnel files of two specified police officers. You indicate that you have supplied certain responsive information to the requestor but seek to withhold other information, claiming that it is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code. You have submitted information to this office for review identified as exhibit C, which consists of personnel records that you have released with certain information redacted; exhibits D and E, which consist of personnel records which you have not released; and exhibit G which consists of an incident report. We have considered the exceptions you claim and reviewed the submitted information.

Exhibit E includes a "Positive Declaration of Psychological Health," these documents are addressed in section 1701.306 of the Occupations Code, which provides, in pertinent part:

(a) The [Commission on Law Enforcement Officer Standards and Education] may not license a person as an officer or county jailer unless the person has been:

(1) examined by a licensed psychologist or psychiatrist and declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health to be the type of officer for which a license is sought;

(b) The agency hiring the person to be licensed as an officer or county jailer shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each of the declarations and shall keep a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.* [Emphasis added.]

We conclude that the declaration in exhibit E is not subject to disclosure under Chapter 552 of the Government Code. Therefore, it need not be released.

Exhibit G is the report of an investigation into the crime of indecency with a child. Section 261.201 of the Family Code governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We are of the opinion that exhibit G consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code and is therefore confidential by statute. As you have not cited any specific rule that the department has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See Open Records Decision No. 440 at 2 (1986)*. Accordingly, the department must withhold exhibit G in its entirety.

You also contend that the county is in possession of responsive information that is subject to chapter 411 of the Government Code Chapter 411 of the Government Code controls release of certain criminal history record information. Section 411.083 reads, in pertinent part,

(a) Criminal history record information maintained by the department is confidential information for the use of the department and, except as provided by this subchapter, may not be disseminated by the department.

Section 411.089 reads in pertinent part,

(a) A criminal justice agency is entitled to obtain from the department any criminal history record information maintained by the department about a person.

(b) Criminal history record information obtained under Subsection (a) may be released by the criminal justice agency:

(1) to any other criminal justice agency, if such release is for a criminal justice purpose; and

(2) through audio response terminals and radio devices, whether digital or voice, if such dissemination is in accordance with rules promulgated by the department.

As criminal history information received from the Department of Public Safety is made confidential by statute, and none of the release provisions apply, it must be withheld under section 552.101 of the Government Code

You contend that the information submitted as exhibits D and E is excepted from disclosure by section 552.102 of the Government Code. This section protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common law right of privacy 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. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 422 (1984) (concluding that details

of self-inflicted injuries are presumed protected by common law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy). The common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). From our review of these exhibits, we conclude that only a small portion of this information is protected by a right of privacy. We have marked that portion of exhibits D and E which must be withheld under section 552.102.

Exhibits D and E also contain information that may be excepted from public disclosure by section 552.117 of the Government Code, which reads in relevant part:

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 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). Section 552.117(2) requires you to withhold information pertaining to a peace officer, without regard to that officer's election under section 552.024. You relate that the employees whose information is at issue are both police officers. Based on this representation we conclude that this information must be withheld. We have marked information in exhibits D and E to indicate that type which is subject to section 552.117. You also indicate that you have redacted information subject to section 552.117 from released documents which you now submit in their entirety as exhibit C. We agree that this information must be withheld under section 552.117.

Exhibit E also contains information that is excepted from public disclosure by section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer that if released, would endanger the life or physical safety of

the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Section 552.119 also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The photograph at issue contains the depiction of a peace officer. None of the exceptions are applicable in this instance. Unless the officer consents to the release of this photograph, it must be withheld under section 552.119 of the Government Code.

Exhibits D and E also contain information that is excepted from public disclosure by section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(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[.]

You must withhold driver's license numbers, VIN numbers, and the license plate numbers pursuant to section 552.130.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 132050

Encl. Submitted documents

cc: Ms. R. Jeanette Parham
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(w/o enclosures)