



May 11, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-1841

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135044.

The Texas Department of Transportation ("TxDOT") received a request for information regarding a former TxDOT employee who is now deceased. Specifically, the requestor seeks:

- 1) What family members/relatives, if any, and their relation to him that he listed on his Application and other employment records[;]
- 2) Who he listed as persons to contact in the event of an emergency[; and]
- 3) The name and contact information for his last supervisor[.]

You state that TxDOT will provide the requestor with documents responsive to category 3 of the request. You claim, however, that the documents responsive to categories 1 and 2 of the request are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from public 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). Personal information must be withheld from the public on the basis of common law 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. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In this instance, the requestor seeks information concerning a deceased individual. As you correctly note in your brief to this office, common law privacy rights lapse upon the death of the subject. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). You assert, however, that the information at issue implicates the common law privacy rights of the deceased individual's designated beneficiaries, emergency contacts, and other TxDOT employees. After reviewing your arguments and the submitted documents, we agree a portion of the submitted documents implicates the common law privacy rights of the designated beneficiaries. *See* Open Records Decision No. 600 at 10 (1992) (information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy). Therefore, you must withhold the beneficiary information we have marked as confidential pursuant to section 552.101 in conjunction with common law privacy. However, we do not believe that the emergency contact information is protected by common law privacy under section 552.101. You may not withhold any emergency contact information in the submitted documents based on common law privacy.

However, we note that section 552.117 of the Government Code requires you to withhold information relating to the home address, home telephone number, and social security number of a current or former government employee, as well as information revealing whether the employee has family members, *if a current or former employee requested that this information be kept confidential under section 552.024*. *See* Open Records Decision Nos. 622 (1994), 455 (1987). In this instance, the submitted documents indicate that the former TxDOT employee whose records are at issue elected that his family member information be kept confidential. Therefore, if the listed emergency contacts are family members of the former employee, then the emergency contact information must be withheld pursuant to section 552.117.

We also note that the submitted documents contain emergency contact information of other TxDOT employees. Prior to releasing this information, TxDOT must determine whether these employees have elected under section 552.024 to keep family member information confidential. If an employee has made such an election and his or her listed emergency contacts are family members, then you must withhold the emergency contact information of his or her family members pursuant to section 552.117.

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,



Kathryn S. Knechtel  
Assistant Attorney General  
Open Records Division

KSK/ljp

Ref: ID# 135044

Encl. Submitted documents

cc: Mr. Gary W. Greif  
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(w/o enclosures)