



June 14, 2000

Ms. Nora Bender  
Acting Open Records Coordinator  
Texas Mental Health and  
Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR2000-2329

Dear Ms. Bender:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137032.

The Department of Mental Health and Mental Retardation (“MHMR”) received a request for information related to three employees. You claim that MHMR has released some of the requested information, but that the remainder of the information is excepted from disclosure under sections 552.101, 552.102, 552.110, and 552.024<sup>1</sup> of the Government Code. We have considered the exceptions 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 information protected by other statutes. Section 552.101 also 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). 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 reasonable 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. *Id.* at 683. We have reviewed two letters from one of the employee’s attorney, Mr. Patrick Slavin, which you believe to be protected by common law privacy. We agree that a portion of the

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<sup>1</sup>The protection implied by section 552.024 is effectuated under section 552.117.

responsive information is protected under section 552.101 and common law privacy. MHMR must withhold the information we have marked. The remaining information you have highlighted must be released.

You have also included billing statements that reveal government credit card numbers and expiration dates. After careful review, we agree that the submitted credit card numbers and expiration dates are protected by section 552.101 and common law privacy and must be withheld. We note, however, that there is a legitimate public interest in the essential facts about a financial transaction involving a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Consequently, you must release the credit card bills themselves after redacting the card numbers and expiration dates.

Section 552.117(1) of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117(1) requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential in accordance with section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

You have marked some of the responsive information as protected under section 552.117(1). You assert that the employees in question have elected to withhold this information from public disclosure; however, you have not indicated when the employees made this election. Therefore, if the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, MHMR must withhold the information. You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made.

We note that some of the responsive information contains motor vehicle information made confidential by section 552.130. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Section 552.130, by its terms, only applies to motor vehicle information issued by the State of Texas. We have marked the information MHMR must withhold.

Because we have resolved this request under sections 552.101 and 552.117, we do not consider your section 552.102 and 552.110 arguments. 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.

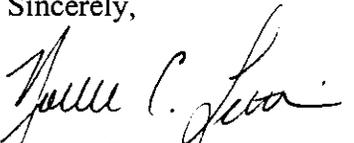
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

CHS/NCL/nc

Ref: ID# 137032

Encl. Submitted documents

cc: Ms. Latreese A. Cooke  
1134 Tahitian Drive  
Bastrop, Texas 78602  
(w/o enclosures)