



August 1, 2000

Mr. Tracy Pounders
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR2000-2902

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137683.

The Dallas Fire Department (the "department") received a request for information related to an internal affairs investigation of a Deputy Fire Chief. You explain that an edited version of the investigation file has been provided to the requestor, but claim that the redacted portions of the submitted information, as well as certain photographs, are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ You have submitted responsive information for our review. 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 common law privacy and excepts from disclosure private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common law right of privacy if the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and is not of legitimate concern to the public. *Id.* at 685; 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

¹In your letter dated May 25, 2000, you assert that the information is excepted from public disclosure pursuant to Government Code sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.117, 552.132, and 552.305. However, you submit comments and arguments only in reference to sections 552.101 and 552.117. Accordingly, this letter ruling only considers sections 552.101 and 552.117. In accordance with Government Code sections 552.301(e)(1)(A) and 552.302, all discretionary exceptions not briefed are waived.

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 (1987) (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), 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). However, the public has a genuine interest in information concerning a public employee's job performance and the reasons for dismissal, demotion or promotion. Open Records Decision No. 444 at 5-6 (1986); *see also* Open Records Decision No. 208 (1978) (disciplinary action against public employee available to public).

We conclude that the redacted information, as well as the submitted photographs, are outside the realm of public interest and, therefore, are excepted from disclosure by a common law right of privacy pursuant to section 552.101. This information must be withheld from public disclosure.

In addition, the documents contain information which may be excepted from required disclosure by section 552.117(1) of the Government Code. Section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, and family information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the individual requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the individual made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

This letter ruling is limited to the particular records at issue in this request and 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.

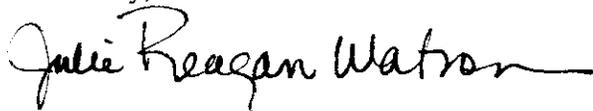
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137683

Encl. Submitted documents

cc: Mr. Dave Michaels
Staff Writer
The Dallas Morning News
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Dallas, Texas 75265
(w/ enclosures)