



September 18, 2000

Mr. Douglas L. Baker  
Assistant District Attorney  
Wichita County  
Wichita County Courthouse  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2000-3592

Dear Mr. Baker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139086.

The Wichita County Family Court Services and the Wichita County Sheriff's Department, divisions of the County of Wichita (the "county") each received a request for eight categories of information. You indicate that the Wichita County Sheriff's Department has no records responsive to this request. You also indicate that you have released all of the information in the possession of the Wichita County Family Court Services that is responsive to seven categories of the request. You seek to withhold information responsive to the request category seeking:

[a]ny and all records, notes, reports, memoranda, audiotapes, videotapes, transcriptions or other information concerning any investigation or inquiry regarding [six named individuals] after February 1, 1999.

You claim that the requested information is excepted from disclosure under section 552.102 of the Government Code. As this exception applies to information from a personnel file of a governmental body, we assume that the submitted materials are from the files of county employees. We have considered the exception you claim and reviewed the submitted information.

Section 552.102 of the Government Code 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). Because the work behavior of an employee and the conditions for his continued employment are matters of legitimate public interest, 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 the submitted materials we conclude that the identities of juvenile participants in the C.O.R.P.S. program are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right of privacy. These identities must be withheld. The balance of the responsive 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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

MLB/er

Ref: ID# 139086

Encl: Submitted documents

cc: Mr. Craig Crockett  
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(w/o enclosures)