OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 5, 2001

Chief William E. Burke
Dayton Lakes Police Department
P.O. Box 1198
Dayton, Texas 77535

OR2001-2897

Dear Chief Burke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150894.

The Dayton Lakes Police Department (the "department") received a request for information relating to the arrest of Micheal A. Wedgeworth. You do not claim any statutory exceptions to prevent disclosure of the responsive information.

You ask whether the requested information is available to the requestor. All information collected and maintained by a governmental body in connection with the transaction of official business is public information that is available to the public unless it is confidential by law or the governmental body asserts and shows that an exception applies in order to withhold the information. Gov't Code §§ 552.002, .021, .301. Subsections 552.301(a) and (b) require a governmental body that wishes to withhold information from public disclosure to ask for a decision from the attorney general and state the applicable exceptions to disclosure no later than the tenth business day after the date of receiving the written request. It appears from the documents submitted to this office that the department received the request for information on May 31, 2001. You requested a decision from this office on June 12, 2001; however, you failed to state the applicable exceptions to the requested information. Because you failed to comply with subsections 552.301(a) and (b) of the Government Code, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). You have not raised any compelling reasons to overcome the presumption that the information is public. We find, however, that the submitted materials include confidential information, which provides a compelling reason for withholding some of the information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. We have marked the information that you must withhold under section 552.101 and common law privacy.

The submitted information also contains confidential information that the department must withhold under section 552.130 of the Government Code. Section 552.130 excepts information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the Texas driver's license number and license plate numbers under section 552.130.

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).

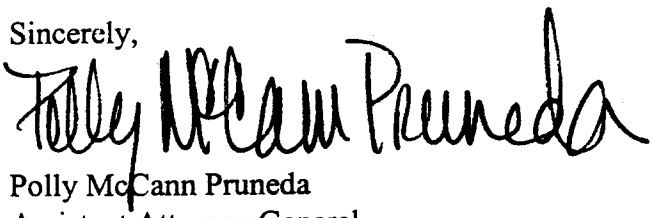
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



Polly McCann Pruneda
Assistant Attorney General
Open Records Division

PMP/sdk

Ref: ID# 150894

Enc: Marked documents

c: Mr. Micheal A. Wedgeworth
202 River Road
Dayton, Texas 77535
(w/o enclosures)