



July 25, 2001

Ms. Janie L. Johnson
Assistant Criminal District Attorney
Gregg County
101 East Methvin Street, Suite 333
Longview, Texas 75601

OR2001-3221

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149845.

The Gregg County District Attorney's Office (the "office") received a request for a list of individuals employed by the Gregg County Sheriff's Office between September 1, 2000 and April 4, 2001. You state that you have released part of the responsive information. You claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information expressly public, unless it is confidential under other law. One category of expressly public information under section 552.022 is "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]" Gov't Code § 552.022(a)(2). The submitted information concerns the names of officers employed by the Gregg County Sheriff's Office who work in the County Organized Drug Enforcement Unit ("CODE"). Therefore, these names must be released to the requestor, unless they are confidential under other law.

You claim that the names of the these officers are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101

encompasses the common law right to privacy. Information is protected by the common law right to privacy if it is (1) information containing highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) information which is of no legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, information may also be withheld from disclosure under section 552.101 in conjunction with the common law right to privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You inform us that the CODE is a specialized group of law enforcement officers who work undercover in the investigation of drug related crimes. You assert that the release of these officers' names would negate the officers' ability to work undercover and would place them in imminent physical danger. Because of your handling of the requested information and the particular circumstances present in this request for a decision, we conclude in this instance that the names of officers assigned to the CODE must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

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

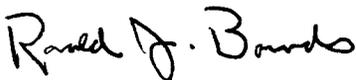
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 149845

Enc. Submitted document

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