



August 2, 2001

Mr. Robert J. Gervais
City Attorney
City of Texas City
P.O. Drawer 2608
Texas City, Texas 77592-2608

OR2001-3359

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150214.

The City Attorney's Office for the City of Texas City (the "office") received a request for fourteen categories of information pertaining to a specified City of Texas City police officer. You state that you have are providing the requestor with all of the responsive information, except for highlighted information which you have submitted to us for review. You claim that the highlighted information is excepted from disclosure pursuant to sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the highlighted information at issue.

You claim that some of the highlighted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.¹ Information must be withheld from disclosure pursuant to the common law right to 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Furthermore, an employee's

¹ Section 552.101 of the Government Code 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.

designation of a retirement beneficiary is excepted from disclosure under the common law right to privacy. *See* Open Records Decision No. 600 (1992). We agree that most of the information which you have highlighted pursuant to the common law right to privacy is excepted from disclosure under section 552.101 of the Government Code. However, we have marked some of this information which is not excepted from disclosure and, thus, must be released to the requestor.

You also claim that some of the highlighted information is excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We agree that most of the information you have highlighted pursuant to section 552.117(2) is excepted from disclosure. However, we have marked the highlighted information which is not excepted from disclosure and, thus, must be released to the requestor.

You also claim that the highlighted driver's license number of the police officer is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure 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. *See* Gov't Code § 552.130. Accordingly, you must withhold from disclosure the highlighted driver's license number of the police officer pursuant to section 552.130 of the Government Code.

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

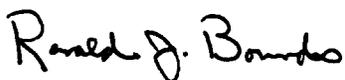
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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# 150214

Enc. Marked documents

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