



August 20, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2001-3653

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150948.

The Texas Department of Public Safety (the "department") received a written request for, among other things, "[a]ll C-1 complaint forms for the past 5 years" and "[a]ll Statement of Charges from Internal Affairs Investigations" for the same time period. You state that the department has released most of the requested information. You contend, however, that portions of some of these records are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.

We note at the outset that you did not request a decision from this office within ten business days after the department's receipt of the records request. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days after receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason

to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). The applicability of the exceptions you raise, sections 552.101 and 552.117, provides a compelling reason for withholding information from the public. *See* Open Records Decision No. 150 (1977) (demonstration that information is made confidential by statute or comes under the protection of exception to disclosure intended to protect privacy interests constitutes compelling reason for non-disclosure). Accordingly, we will consider the applicability of these two exceptions to the submitted documents.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

After reviewing the information at issue, we agree that some of the information you have highlighted implicates the privacy interests of some individuals. *See, e.g.*, Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common law privacy). On the other hand, we do not believe that the fact that a public employee is required to attend an alcohol rehabilitation program as a condition of employment may be withheld from the public on privacy grounds. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). We have marked the information the department must withhold pursuant to section 552.101 in conjunction with common law privacy.

Section 552.117(1) of the Government Code requires that the department withhold the home address, home telephone number, and social security numbers of current or former department employees, as well as information revealing whether the employee has family members, but only if the employee elected to keep this information confidential in accordance with section 552.024 of the Government Code. Assuming the subject employees made such an election prior to the department's receipt of the open records request, we conclude that these types of information must be withheld. *See* Open Records Decision No. 530 (1989). However, even if such an election has not been made, section 552.117(2) makes confidential the same categories of information pertaining to "a peace officer as defined by Article 2.12, Code of Criminal Procedure." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We have marked

the information that the department must withhold pursuant to section 552.117. All remaining information must be released, except as discussed above.

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).

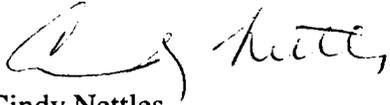
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/RWP/seg

Ref: ID# 150948

Enc. Submitted documents

c: Ms. Nanci Wilson  
KVUE News  
3201 Steck Avenue  
Austin, Texas 78746  
(w/o enclosures)