



March 25, 2002

Mr. John Feldt
Assistant District Attorney
Civil Division
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2002-1488

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160249.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for information relating to a county commissioner and the members of her staff, including:

- [1] All calendars, daybooks, appointment planners and other scheduling material in all forms, including written, electronic and otherwise, for the years 2000 and 2001.
- [2] All logs of phone messages and fax logs for the years 2000 and 2001.
- [3] All phone lists, directories, and Rolodex and Rolodex-like listings, including written, electronic and otherwise, that are currently maintained.

You state that the district attorney has released some information contained in telephone listings and phone message logs maintained by the commissioner and her staff. You also state, however, that you have withheld responsive home addresses and telephone numbers, personal cell telephone numbers, private fax numbers, and e-mail addresses. You claim that these types of information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two kinds of interests. See Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); see also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Open Records Decision No. 455 at 3-7 (1987); see also *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See Open Records Decision No. 455 at 6-7 (1987); see also *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (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). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision No. 659 at 4-5 (1999) (summarizing information that attorney general has determined to be private).

You raise section 552.101 with respect to the home addresses and telephone numbers, cell telephone numbers, and private fax numbers of members of the general public. This office has stated on several occasions that an individual's home address and telephone number generally are not protected by constitutional or common-law privacy under section 552.101. See Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). You also indicate that the information in question includes unpublished telephone, cell phone, and fax numbers. However, we also have frequently stated that a mere expectation of privacy on the part of the individual who provides information to a governmental body does not permit that information to be withheld under section 552.101. See Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because the party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information is not

excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted), 169 at 6 (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution). Therefore, the district attorney may not withhold the private individuals' home addresses and telephone, cell phone and fax numbers under section 552.101.

Next, we address your claims under section 552.117 of the Government Code. You state that the information that the district attorney has withheld includes the home addresses and telephone numbers of current or former officials and employees of Denton County and of licensed peace officers. Under section 552.117(1), the district attorney must withhold the home address, home telephone number, and social security number of a current or former official or employee of Denton County, as well as information that reveals whether the individual has family members, if the current or former official or employee requested confidentiality for this information in accordance with section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 1-3 (1987). However, the district attorney may not withhold this information in the case of a current or former county official or employee who requested confidentiality under section 552.024 after the request for information was made. Whether a particular item of information is public must be determined at the time that the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Under section 552.117(2), the district attorney must withhold the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code.¹ We have marked additional information that the district attorney may be required to withhold under section 552.117.

You also state that you have withheld the personal cell phone numbers and private fax numbers of county employees and licensed peace officers. You ask whether section 552.117 protects these types of information. Section 552.117 encompasses a personal cell telephone number, provided that the cell phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Section 552.117 also encompasses a telephone number that provides access to a home fax machine. *See* Open Records Decision No. 532 at 3 (1989) (purpose of section 552.117 is to protect government employees from being harassed while at home).

You also raise section 552.137 of the Government Code with regard to e-mail addresses. This exception, which the Seventy-seventh Legislature added to chapter 552 of the Government Code, provides as follows:

¹Section 552.117(2) adopts the definition of "peace officer" found in article 2.12 of the Code of Criminal Procedure.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Section 552.137 is applicable only to an e-mail address that belongs to a member of the general public. Under section 552.137, the district attorney must withhold the e-mail addresses of members of the general public, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(a). We note, however, that the district attorney also has withheld the e-mail addresses of private and governmental entities and of public officials and employees. Section 552.137 is not applicable to these types of e-mail addresses. Furthermore, section 552.137 is not applicable to the website addresses that the district attorney also has withheld. We have marked the types of information that the district attorney may not withhold under section 552.137.

Lastly, we note that the information at issue also includes an account number. Section 552.136, as added to chapter 552 of the Government Code by the Seventy-seventh Legislature, is applicable to certain account numbers.² This new exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

²The Legislature also enacted two other bills that add a section 552.136 to chapter 552. House Bill 2589 makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., ch. 545, § 5, 2001 Tex. Sess. Law Serv. 974, 975 (Vernon) (codified at Gov't Code § 552.136). Senate Bill 15 makes information maintained by family violence shelter centers confidential. *See* Act of May 3, 2001, 77th Leg., R.S., ch. 143, § 1, 2001 Tex. Sess. Law Serv. 279 (Vernon) (codified at Gov't Code § 552.136). Senate Bill 694 also enacted the same language as House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code. *See* Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (codified at Gov't Code § 552.137).

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked a bank account number that the district attorney must withhold under section 552.136.

In summary, section 552.117(1) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former official or employee of Denton County who requested confidentiality for that information in accordance with section 552.024. The home address, home telephone number, social security number, and family member information of a peace officer must be withheld under section 552.117(2), regardless of whether the peace officer has complied with section 552.024. The district attorney must withhold the e-mail addresses of members of the general public under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its disclosure. The district attorney also must withhold the bank account number under section 552.136. The rest of the information in question must be released. As sections 552.117, 552.136, and 552.137 are dispositive, we need not address section 552.1175.

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,

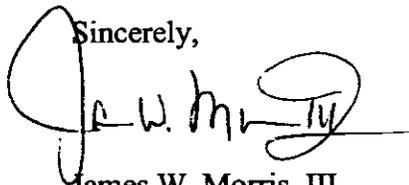
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 black ink, appearing to read "J. W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 160249

Enc: Submitted documents

c: Mr. Brooks Egerton and Mr. Reese Dunklin
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)