



November 18, 2002

Ms. Leslie Carrasco
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2002-6574

Dear Ms. Carrasco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172284.

The City of San Antonio (the "city") received a request to inspect all documents received during a certain time period that gave notice to the city of "a death, personal injury of any person or damage to or destruction of property." You state that the city will allow the requestor to inspect all but four documents, which you claim are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section encompasses common law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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 information in Exhibit G that must be withheld under section 552.101 and the common law right of privacy.

Section 552.117(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is

protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(2) provides that information that relates to the home address, home telephone number, social security number, or family member information of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer made an election under section 552.024 of the Government Code to keep such information confidential. We note, however, that the protections of section 552.117 apply only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117).

The city employee whose information is contained in Exhibit E and the city park police officer whose information is at issue in Exhibit C seek reimbursement for losses that they suffered while acting as city employees. The employee in Exhibit E made a request under section 552.024 prior to the date the city received this request. Because all of the requirements of section 552.117 are met, the city must withhold the information we have marked in Exhibits C and E. Exhibit D, on the other hand, concerns a loss sustained by a peace officer who does not work for the city. Because the city does not hold this information as the employer of this individual, it may not withhold the peace officer's home address and telephone number contained in Exhibit D under section 552.117(2).

We note, however, that the peace officer's home address and telephone number contained in Exhibit D are subject to section 552.1175 of the Government Code, which states in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may

not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

We have marked the information in Exhibit D that is subject to section 552.1175. Thus, if the peace officer elects to restrict access to this information in accordance with this provision, we conclude that the city must withhold the address and telephone number we have marked in Exhibit D.

Finally, we note that Exhibit D also contains a the license plate number of a motor vehicle. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code 552.130(2). Therefore, under section 552.130, the city must withhold the highlighted license plate information contained in Exhibit D.

In summary, the city must withhold the marked information in Exhibit G on the basis of common law privacy and section 552.101 of the Government Code. We have also marked information in Exhibits C and E that the city must withhold pursuant to section 552.117. The city must withhold the peace officer's home address and phone number contained in Exhibit D only if the officer elects to keep such information confidential under section 552.1175. The license plate in Exhibit D must be withheld under section 552.130. The remaining submitted information must be released.

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).

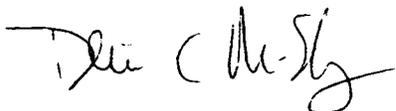
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

Ms. Leslie Carrasco - Page 5

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with the first name "Denis" and last name "McElroy" clearly distinguishable.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 172284

Enc. Submitted documents

c: Mr. John T. Reynolds
3 Queens Gate
San Antonio, Texas 78218
(w/o enclosures)