



November 22, 2002

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

OR2002-6715

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# 172668.

The Texas Department of Public Safety (the "department") received a request for a copy of a specified trooper's personnel file. You state that you will be making most of the requested information available to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.117 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

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 timely request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee with whom the information is associated did not request confidentiality for such information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Based on our review of the submitted information, we find that the former department trooper whose information is at issue in the present request requested confidentiality for his section 552.117 information prior to the department's receipt of this request for information and in accordance with section 552.024. Accordingly, we conclude that the department must withhold the section 552.117 information that we have marked pertaining to the former department trooper pursuant to section 552.117(1) of the Government Code.

We note that portions of the information at issue are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹ Information is protected from disclosure under the common-law right of 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 Foundation 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. *See* Open Records Decision Nos. 600 (1992) (finding personal financial choices concerning insurance and designation of beneficiary of employee's retirement benefits generally confidential), 545 (1990) (common law privacy protects personal financial information), 523 (1989) (information related to individual's mortgage payments, assets, bills, and credit history excepted under the common law right to privacy). Based on our review of the information at issue, we conclude that the department must withhold the personal financial information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We also note that the remaining information at issue includes some information that is subject 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, we conclude that the department must withhold the information that we have marked pursuant to section 552.130 of the Government Code.

Finally, you also request that this office issue a previous determination allowing the department to withhold a current or former law enforcement officer's birth certificate in response to future requests for such information without the necessity of seeking a ruling from this office with regard to such information. We decline to issue such a previous determination at this time.

In summary, the department must withhold the information that we have marked pursuant to section 552.117(1) of the Government Code. The department must withhold the personal financial information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the information that we have marked pursuant to section 552.130 of the Government Code. The department must release the remaining submitted information to the requestor.

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. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by 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 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 that reads "Ronald J. Bounds". The signature is written in a cursive style with a large initial "R".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 172668

Enc. Submitted documents

c: Mr. David J. Moraine
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(w/o enclosures)