



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 28, 2003

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2003-3607

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181762.

The Texas Youth Commission (the "commission") received a request for a copy of a specific investigation involving the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requested information constitutes a completed investigation subject to release under the Public Information Act. Section 552.022(a) of the Government Code provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Because the requested information pertains to a completed investigation, the commission may withhold this information only to the extent it is made confidential under other law or

is otherwise protected by section 552.108 of the Government Code.¹ You argue that a portion of the submitted information is excepted under section 552.101 and common-law privacy, which is considered “other law” for purposes of section 552.022.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and includes common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

You ask whether you may withhold the identities of the victims and witnesses and their statements in the submitted investigations under common-law privacy in conjunction with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied). In *Ellen* the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigative file at issue involves staff sexual misconduct with a juvenile inmate, not sexual harassment. We decline to apply *Ellen* to investigations of sexual misconduct with a juvenile inmate. However, 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. *Id.* at 683. Based on our review of the investigative file at issue, we agree that you must withhold the names and identifying information of juvenile offenders that you have highlighted, as well as the additional identifying information we have marked, under section 552.101 and the doctrine of common-law privacy. *Cf.* Fam. Code § 58.007. The remainder of the information must be released with the following exception.

We note that the submitted documents also contain information that the commission may be required to withhold under section 552.117(1) of the Government Code. Section 552.117(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117(1) on behalf of a current or former employee who made

¹ Because you do not raise section 552.108, we do not consider the applicability of this exception.

a request for confidentiality under section 552.024 prior to the date on which the commission received the request for information. The commission may not withhold information under section 552.117(1) in the case of a current or former employee who did not make a timely election to keep the information confidential. We therefore conclude that, to the extent that an employee timely and specifically elected to keep their home address, home telephone number, social security number, and family member information confidential, the commission must withhold those types of information under section 552.117(1). We have marked the types of information that the commission may be required to withhold under section 552.117.

In the event that the social security numbers at issue are not excepted under section 552.117, we further note that a social security number also may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the commission to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the commission, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the commission should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the commission must withhold the names and identifying information of juvenile offenders that you have highlighted in the submitted information, as well as the additional information we have marked, under section 552.101 and common-law privacy. In addition, if a current or former employee has made a timely request for confidentiality under section 552.024, the commission must withhold the information we have marked under section 552.117 of the Government Code. Social security numbers must be withheld under section 552.101 if obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. The remaining information must be released to the requestor.²

² We note that the information released contains information relating to the requestor that might ordinarily be withheld under common-law privacy as well as section 552.117. However, the requestor has a special right of access under section 552.023 (government body may not deny access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Should the commission receive another request for the submitted information, it should again seek a ruling from this office.

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 Dep't of Pub. 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 cursive script that reads "Robert F. Maier".

Robert F. Maier
Assistant Attorney General
Open Records Division

RFM/seg

Ref: ID# 181762

Enc. Submitted documents

c: Ms. Loretta Ellis
309 North 9th
San Saba, Texas 76877
(w/o enclosures)