

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2003

Mr. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff's Department
133 North Industrial Boulevard
Dallas, Texas 75207-4313

OR2003-6001

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186549.

The Dallas County Sheriff's Department (the "Department") received a request for all records related to any internal affairs investigations of two named officers. You argue that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by counsel for the Requestor. *See* Gov't Code § 552.304.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Department submits information showing Dallas County is a civil service county. *See* Labor Code ch. 157, 158. The County's Civil Service Commission promulgated certain rules and regulations. The Department argues that the rule regarding expunction of disciplinary and complaint records renders certain information sealed and consequently excepted from disclosure. The Civil Service Commission Rules and Regulations state in relevant part:

If an employee has a complaint filed against him and the department and/or Commission finds the complaint to be false, un-founded, or the employee is otherwise shown to be not guilty of any infraction...then all files relating to the aforementioned matter will be sealed within six months to be expunged from all department and Commission records within two (2) years.

The Department argues that as a statutorily created entity, the Commission's rules regarding withholding information meet the "confidential by law" criteria under section 552.101.

We note that a governmental body may not promulgate a rule purporting to make information confidential unless the governmental body has specific statutory authority to do so. *See* Open Records Decision 594 at 3 (1991) (requiring statutory authority before a governmental body may deem information confidential). The Department has provided no information to this office that the Commission has any statutory authority to make certain information confidential. Thus, the requested information may not be withheld from disclosure on the basis of the Commission's Rules.

We next turn to the common-law right of privacy argument afforded under section 552.101. 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*. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (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.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the privacy test formulated by the Texas Supreme Court in *Industrial Foundation*. The Department argues that disclosure of information in an officer's personnel file would constitute such an invasion of privacy under section 552.102. Accordingly, we will consider your section 552.101 common-law privacy arguments together with your section 552.102 claim.

We find that because the requested information involves the conduct of a public official in the workplace, the information is of legitimate concern to the public and cannot be considered confidential under common-law privacy. *Industrial Foundation*, 540 S.W.2d at 683-85; *see* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common law right of privacy).

However, the requested records contain information that is excepted from disclosure under sections 552.117 and 552.119 of the Government Code. Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the police officer has family members. Therefore, the Department must withhold those portions of the records that reveal

certain personal information about an officer. *See* Gov't Code § 552.117(a)(2).¹ We have marked these documents accordingly. Similarly, section 552.119 excepts from public disclosure a photograph of a peace officer² that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted information contains a photograph of an officer and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officer has executed any written consents to disclosure. Thus, you must withhold the photograph depicting a peace officer.

In summary, the Department must withhold certain marked portions of the submitted information according to sections 552.117 and 552.119 of the Government Code. The Department must release the remaining information.

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

¹ In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature recently amended section 552.117 of the Government Code by adding "(a)" to the relevant language of this provision. *See* Act of May 30, 2003, 78th Leg., R.S., S.B. 1388, § 1 (to be codified as an amendment to Gov't Code sec. 552.117).

² "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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,



Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 186549

Enc: Submitted documents

c: Ms. Dionne Carney Rainey
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(w/o enclosures)

CAUSE NO. GV 304152

CITY OF WACO, TEXAS,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201st JUDICIAL DISTRICT

FILED

05 JAN 26 PM 2:18

Amelia Fabrizio-Sumner
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff, City of Waco, and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor was sent reasonable notice of this setting and of the parties' agreement that City of Waco may withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor, Larry Kelley, has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, the descriptions, or parts thereof, of Waco's legal bills from Wickliff & Hall for May 2001 through April 2002, as well as Waco's legal bills from Cole & Powell for May 2002 through April 2003, as marked by the Office

of the Attorney General is excepted from disclosure by Tex. R. Evid. 503.

2. Waco may redact the descriptions, or parts thereof, in the legal bills as enumerated in ¶ 1 of this Agreed Final Judgment, along with any other information in the legal bills that the Attorney General determined was excepted from disclosure in OR2003-6601.

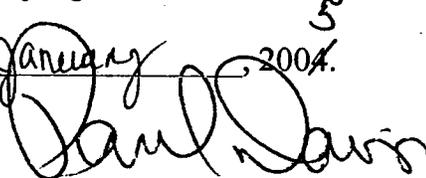
3. Waco shall release the legal bills, with the information described in ¶¶ 1 and 2 of this Agreed Final Judgment redacted, to the requestor promptly upon receipt by Waco of the Agreed Final Judgment signed by the Court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 26th day of January, 2004.⁵


PRESIDING JUDGE

APPROVED:


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