



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2003

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2003-7486

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189704.

The Texas Alcoholic Beverage Commission (the "commission") received a request for training, personnel, and disciplinary information regarding a named commission employee, as well as specified information regarding commission policy and procedures. The submitted documents indicate that the commission has released some personnel and background investigation information to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note you have not submitted any information regarding commission policy and procedures to this office for review, nor do you raise any exceptions to disclosure for such information. Therefore, we assume that, to the extent this information exists, it has been released to the requestor. If not, you must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly

objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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.

This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). Furthermore, when a law enforcement agency compiles an individual's criminal history information, the compiled information takes on a character that implicates the individual's common-law right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked personal financial information in the submitted documents that is excepted from disclosure under section 552.101 in conjunction with common-law privacy and must be withheld. In addition, to the extent the commission maintains any information that depicts the individual at issue as a criminal suspect, arrestee, or defendant, the commission must withhold such information under section 552.101 in conjunction with common-law privacy.

Next, you advise that the submitted documents contain information that is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure.¹ *See* Open Records Decision No. 622 (1994). Thus, we have marked the information in the submitted documents that the commission must withhold under section 552.117(a)(2) of the Government Code.²

¹As you indicate, article 2.12(6) specifically includes law enforcement agents of the commission as peace officers.

²Based on this finding, we do not reach your claim under section 552.1175 of the Government Code.

Finally, you seek to withhold Texas driver's license information pursuant to section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that the commission must withhold the marked Texas driver's license information pursuant to section 552.130 of the Government Code.

In summary, we have marked personal financial information that is excepted under section 552.101 of the Government Code in conjunction with common-law privacy and must be withheld. Any information depicting the named employee as a criminal suspect, arrestee, or defendant must also be withheld pursuant to section 552.101 in conjunction with common-law privacy. We have marked information that must be withheld under section 552.117(a)(2) of the Government Code. The marked Texas driver's license information must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 189704

Enc: Submitted documents

c: Mr. Justin Richardson
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(w/o enclosures)