



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 1, 2003

Ms. Julie Joe  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767-1748

OR2003-8560

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191646.

The Travis County Sheriff's Office (the "sheriff") received a request for information related to case number IA2003-047R. You state that the sheriff has withheld some responsive information pursuant to a previous determination that our office granted all governmental bodies in Open Records Decision No. 670 (2001). You claim, however, that portions of the remaining requested information are excepted from disclosure pursuant to 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. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes as well as the common-law right to privacy. Information must be withheld under the common-law right to privacy when it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See 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. *See id.* at 683. 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, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.,* 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). In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Based on your arguments and our review of the submitted information, we find that the information that you have marked is not protected from disclosure under the common-law right to privacy and, thus, may not be withheld from the requestor on that basis. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of highly personal nature), 405 at 2 (1983) (manner in which employee performed his job cannot be said to be of minimal public interest), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy).

Further, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.117 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 peace officer has family members.<sup>1</sup> *See* Gov't Code § 552.117(a)(2).<sup>2</sup> Section 552.117(a)(2) also excepts an officer's former home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). Accordingly, we agree that the sheriff must withhold the information that you have marked pursuant to section 552.117(a)(2) of the Government Code. The remaining submitted information must be released to the requestor.

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<sup>1</sup> Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

<sup>2</sup> 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, 78<sup>th</sup> Leg., R.S., ch. 947, 2003 Tex. Sess. Law Serv. 2822 (Vernon) (to be codified as an amendment to Gov't Code sec. 552.117).

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 black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 191646

Enc. Submitted documents

c: Mr. Felipe Salinas  
7126 Wishing Well Drive  
Austin, Texas 78745  
(w/o enclosures)