



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2004

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 53404
Grand Prairie, Texas 75053-4054

OR2004-2784

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198816.

The City of Grand Prairie (the "city") received a request for information regarding an incident that occurred in the municipal court lobby on December 12, 2003, including (1) all records related to the hiring, employment, and performance of Officer Perez, (2) all records related to the hiring, employment, and performance of any other marshal or security officer on duty during the morning of the incident, (3) all documents and records related to the incident, (4) all documents that reflect the name, address, and telephone number of any individual working at the clerk's desk during the morning of the incident in question, and (5) all documents that reflect the name, address, and telephone number of anyone who paid a fine, requested a hearing, or was otherwise present during the morning of the incident in question. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. You also claim that some of the requested documents are judicial records, and thus not subject to the Public Information Act. We have considered your arguments and reviewed the submitted information.

For purposes of the Public Information Act (the "Act"), the judiciary is not a governmental body. Gov't Code §552.003(1)(B). The purposes and limits of the judiciary exception were construed in *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ). The court held that the Webb County Juvenile Board was not part of the judiciary for purposes of the Act, despite the fact that the board consisted of members of the judiciary and

the county judge. In *Benavides v. Lee*, the court explained the purpose of the judiciary exception:

The judiciary exception . . . is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

Id. at 152. Thus, to fall within the judiciary exception, the document must contain information that pertains to judicial proceedings. *See* Open Records Decision Nos. 527 (1989) (Court Reporters Certification Board not part of judiciary because its records do not pertain to judicial proceedings), 204 (1978) (information held by county judge that does not pertain to proceedings before county court subject to Public Information Act). Municipal court documents reflecting the identity of those who paid fines or requested a hearing are judicial documents; therefore, we conclude such documents are records of the judiciary and not subject to the Act.

You acknowledge, and we agree, that the city has not sought an open records decision from this office within the deadlines prescribed by section 552.301. *See* Gov't Code § 552.301(b) (governmental body seeking to withhold information must ask for a decision from attorney general within ten business days of receiving written request for information), § 552.301(e) (governmental body seeking decision from attorney general must submit certain items within fifteen business days of receiving written request for information).¹ If a governmental body does not follow the procedures under section 552.301 for requesting an attorney general decision, the requested information is presumed to be public and must be released unless there is a compelling reason to withhold it. Gov't Code § 552.302. Compelling reasons to withhold information include showing that the information is made confidential by another source of law or that its release affects third-party interests. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). You claim “there is also an exception for matters in litigation,” which we presume refers to section 552.103. Section 552.103 is a discretionary exception that does not overcome the presumption that the submitted information is public. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Thus, the city has waived its claim under section 552.103. Because sections 552.101

¹We note that you redacted certain information, including work telephone and pager numbers for police officers within the documents prior to submitting the documents to us for review. The city should not again redact information from documents that it submits to this office when requesting a decision under chapter 552 of the Government Code, unless it has been expressly authorized in a previous determination to withhold such information from disclosure without requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (describing two types of previous determinations).

and 552.117 of the Government Code can provide a compelling reason for withholding information, we will address your arguments under these sections.

Section 552.117(a)(1) 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 request that this information be kept confidential under section 552.024. You assert that section 552.117 protects the names, telephone numbers, and addresses of the employees who were working at the municipal court clerk's desk on the morning of the incident at issue. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The city may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024. Gov't Code § 552.117(a)(2). You have already redacted much of this information regarding Officers Perez and DeAx, but we have marked additional information in these officer's records that you must withhold under section 552.117(a)(2). We note that you also redacted information in the officers' files that is not confidential under section 552.117, and must therefore be released to the requestor. The information you have redacted, but that must be released, includes the work telephone and pager numbers of the officers. Telephone and pager numbers provided to public employees at public expense cannot be withheld from disclosure under section 552.117. *See Open Records Decision No. 506 at 5-7 (1988)*.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines 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 the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). You must therefore withhold the portions of the submitted information that we have marked under common law privacy and section 552.101. We note that information revealing a public employee's date of birth is not protected by common law privacy. Attorney General Opinion MW-283 (1980). Any such birth dates you have redacted in the submitted information must be released. We note that the date of hiring and the annual base pay of those employees who were working at the municipal court clerk's desk are public, and must be released. *See* Gov't Code § 552.022(a)(2). In addition, the names and work telephone numbers of previous supervisors listed in the officers' employment application forms are not confidential under common law privacy, and must be released.

Finally, section 552.130 provides in relevant part:

(a) Information is excepted from the requirement 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[.]

You must therefore withhold under section 552.130 any Texas driver's license number, vehicle identification number, and license plate number found within the submitted information.²

In summary, (1) municipal court documents are judicial documents not subject to the Act, (2) the home addresses, telephone numbers, and social security numbers of the employees who were working at the municipal court clerk's desk on the morning of the incident at issue and information revealing whether they have family members are excepted under

²This office will raise mandatory exceptions like sections 552.101 and 552.130 of the Government Code on behalf of a governmental body when the governmental body fails to raise such exceptions and third-party interests are at stake. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.117 only if the employee elected to withhold that information under section 552.024, (3) the home addresses, telephone numbers, and social security numbers of Officers Perez and DeAx, and information revealing whether they have family members are excepted under section 552.117, (4) certain information within the submitted documents is confidential under common law privacy, and are excepted from release under section 552.101, and (5) any Texas driver's license number, vehicle identification number, and license plate number in the submitted documents must be withheld under section 552.130. The remaining information must be released.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 198816

Enc. Submitted documents

c: Ms. Lisa A. Dreishmire
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Dallas, Texas 75223
(w/o enclosures)