



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2004

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2004-10517

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 214773.

The City of Longview (the "city") received a request for certain e-mails involving a specified individual and information related to a named city employee. You inform us that you have released some of the requested information but claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.109, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

You inform us that the requested e-mails are subject to a previous ruling from this office. In Open Records Decision No. 673 (2001), this office addressed the circumstances under which a governmental body could rely on a ruling from this office as previous determination for purposes of section 552.301 of the Government Code. In that ruling, we concluded that one situation in which a governmental body may rely on a prior ruling of this office as a previous determination arises when the following criteria are met: 1) the information at issue consists of precisely the same records or information previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body that receives the request for the records or information is the same governmental body that

previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise information is or is not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

In Open Records Letter No. 2004-10040 (2004), this office determined that portions of the requested e-mails were excepted from disclosure pursuant to sections 552.101, 552.109, 552.117, and 552.137 of the Government Code and that remainder of the e-mails were required to be released. Your arguments and representations indicate that all four criteria of a previous determination are met in this instance. We, therefore, conclude that Open Records Letter No. 2004-10040 (2004) functions as a previous determination in this instance, and the city must comply with that ruling. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

We turn now to your arguments regarding information pertaining to the named city employee, which is not subject to a previous ruling from this office. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right of privacy, which protects information if 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

We have reviewed the submitted records and marked the information that must be withheld pursuant to section 552.101 in conjunction with common law privacy. As for the remaining information, we find that, even if it could be considered highly intimate or embarrassing, it is of legitimate public concern. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his

resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, none of the remaining information may be withheld under section 552.101 on the basis of common law privacy.

You also assert that section 552.117 is applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the current and former 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. 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). If this employee elected, prior to the city's receipt of this request, to keep her personal information confidential, section 552.117(a)(1) requires the city to withhold the employee's home address and telephone number, social security number, and any information that reveals whether this employee has family members. The city may not withhold this employee's information under section 552.117 if she did not make a timely election to keep the information confidential. We have marked the information that must be withheld under section 552.117(a)(1) to the extent the exception applies.

You also contend that the submitted records include information governed by section 552.130. This section 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[.]

Gov't Code § 552.130(a)(1), (2). We have marked the Texas-issued motor vehicle record information that you must withhold under section 552.130.

In addition, you note that section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Thus, the city

must withhold these e-mail addresses under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b).

In summary, the city must comply with Open Records Letter No. 2004-10040 (2004) in regard to the requested e-mails. As for the remaining records, we have marked information that the city must withhold pursuant to section 552.101 in conjunction with the common law right to privacy. We have also marked the information that be withheld under section 552.117(a)(1) if that employee made a timely confidentiality election. The city must withhold the Texas motor vehicle record information that we have marked under section 552.130 and public e-mail addresses that we have marked section 552.137. The remaining 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 214773

Enc. Submitted documents

c: Mr. Jim Hardin  
Longview News-Journal  
P.O. Box 1792  
Longview, Texas 75606  
(w/o enclosures)