



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2005

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2005-06579

Dear Mr. Swope:

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# 229999.

The Harris County Sheriff's Department (the "department") received a request for information pertaining to three named department deputies. You claim that some of the requested information is being forwarded to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor, in his request for information, allows the department to withhold an "officer's current and former home addresses, home telephone numbers, social security number, and information indicating whether the peace officer has family members, vehicle identification numbers, and driver's license or motor vehicle or title or registration that Texas has issued, medical information or information indicating disabilities or specific illnesses, from severe emotional and job-related stress, prescription drugs, illnesses, operations, and physical handicaps, tax forms, and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds." Thus, this information is not responsive to the present request. We do not address your arguments for the nonresponsive information, which we have marked, and it need not be released.

Next, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-06399 (2005). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have

no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the department must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Record Letter No. 2005-06399 (2005). *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent this information was not the subject of this prior ruling, we address your arguments.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not stated that the submitted information pertains to a specified ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. We thus conclude you have not met your burden under section 552.108(a)(1), and the department may not withhold any of the information at issue on that ground.

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 information protected by other statutes. Access to medical records is governed by the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The submitted information does not contain medical documents; therefore, the information is not confidential under the MPA, and the department may not withhold any of it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy 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. This office has found that the following types of information are excepted from required public disclosure under 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, this office has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked the information that is confidential under common law privacy and that the department must withhold under section 552.101. However, we do not find the remaining information to be highly intimate or embarrassing information; therefore, this information is not confidential under common law privacy, and the department may not withhold it under section 552.101 on that ground.

Finally, we note that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” The department must withhold the insurance policy numbers we have marked under section 552.136.

To conclude, the department is not required to release the marked nonresponsive information. It must withhold pursuant to section 552.101, the marked information that is confidential under common law privacy and the insurance policy number marked under section 552.136. It must release the remaining responsive 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, upon receiving this ruling, the governmental body

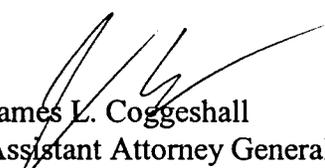
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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); *Tex. 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# 229999

Enc. Submitted documents

c: Mr. Neal Davis
DeGuerin Dickson & Hennessy
1018 Preston Avenue, 7th Floor
Houston, Texas 77002
(w/o enclosures)