



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2005

Mr. Jack K. Choate
Assistant Criminal District Attorney
Walker County
P.O. Box 1659
Huntsville, Texas 77340

OR2005-07483

Dear Mr. Choate:

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# 229652.

The Walker County Criminal District Attorney's Office (the "office") received a request for documents and correspondence relating to District Attorney David Weeks and a specific issue. You have released some of the requested information, but you claim that the submitted information is excepted from disclosure under section 552.106, 552.109 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Some of the correspondence included in the submitted documents entitled "Working Papers and Correspondence" are e-mails which were generated after the date that the request was received. These e-mails are not required to be released, as they did not exist on the date of the request and are therefore non-responsive.

Section 552.106 excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation" and "[a]n internal bill analysis or working paper prepared by the governor's office for the purpose of evaluating proposed legislation." Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body;

and therefore section 552.106 encompasses only policy judgments, recommendations and proposals involved in preparation of proposed legislation, and does not except from disclosure purely factual information. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.*

You state that most of the documents and correspondence that you have submitted were “created and disseminated by the Texas District and County Attorney’s Association (a non-governmental entity)” to its members to discuss proposed legislation. You do not indicate, however, that the office was involved in the preparation of the proposed legislation as a subordinate of or advisor to a legislative body. Therefore, we determine that none of the submitted documents are excepted from disclosure under section 552.106.

We note that submitted documents contain e-mail addresses of members of the public. Section 552.137 of the Government Code 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 specifically excluded by section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business.

The e-mail addresses at issue are not specifically excluded by section 552.137(c). Unless the relevant individual has consented to its release, we determine that the department must withhold the e-mail addresses we have marked pursuant to section 552.137(a).

We next address your claims with regard to the submitted phone records. Section 552.117 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. 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 office 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. You state that the submitted documents contain “phone listings of personal family members and personal and cell phone numbers of employees” which may be excepted from disclosure under section 552.117 of the Government Code. If the employees whose information is at issue timely elected to keep their personal information confidential, the office must withhold the employees’ home telephone numbers and family member phone numbers which you have marked in the submitted documents. The office may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential.

You also claim that the “phone listings of personal family members and personal and cell phone numbers of employees” may be excepted from disclosure under section 552.109 of the Government Code. To the extent this information is not excepted under section 552.117, we therefore address your claim under section 552.109 with respect to such information. Section 552.109 excepts from public disclosure “[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” Gov't Code § 552.109. This office has held that the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. We will therefore consider your claims regarding common-law privacy under section 552.101 together with your claim under section 552.109.

In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy 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. *Id.* at 685. 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. A person's telephone number is not highly intimate or embarrassing information. We therefore find that such numbers are not protected by privacy and are not excepted on that basis.

The telephone records contain an account number that is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Upon review of the submitted information, we agree that the office must withhold the account number information we have marked pursuant to section 552.136 of the Government Code.

In summary, information generated after the request was received is non-responsive and does not need to be released. The office must withhold the information you have marked under section 552.117, for those employees who have timely elected. The marked account number for the cell phone must be withheld under section 552.136 of the Government Code. We have also marked those email addresses which must be withheld under section 552.137. 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, 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,

A handwritten signature in black ink, appearing to read "Elizabeth C. Reeder". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Elizabeth C. Reeder
Assistant Attorney General
Open Records Division

ECR/sdk

Ref: ID# 229652

Enc. Submitted documents

c: Ms. Ann del Llano
ACLU of Texas
P.O. Box 12905
Austin, Texas 78711
(w/o enclosures)