



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2005

Sheriff Arulfo "Andy" Gomez  
Reeves County Sheriff's Department  
P.O. Box 910  
Pecos, Texas 79772

OR2005-08591

Dear Sheriff Gomez:

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# 232584.

The Trans Pecos Drug Task Force (the "task force") received a request for nine categories of information pertaining to task force case logs, agents, and confidential informants, excluding the names and identifying information of any current informants. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of representative samples.<sup>1</sup>

Initially, we note that, for the requested copies of current confidential informant agreements, the requestor states that "names and identifying information redacted is fine[.]" Thus, the identifying information of current informants in the submitted information is not responsive to the request for information. This ruling therefore does not address the public availability of this nonresponsive information, and the task force is not required to release this information in response to this request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we must address the task force's obligations under section 552.301 of the Government Code, which describes the procedures a governmental body must follow if it wishes to withhold information under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

You state that you received the request for information on June 29, 2005, but you did not submit the requested information to us until July 22, 2005; therefore, you did not submit the requested information within the fifteen-day deadline mandated by section 552.301. *See* Gov't Code § 552.301. Because the requested information was not timely submitted, it is presumed to be public information. *Id.* § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

You assert that portions of the requested information are excepted from disclosure under section 552.108 of the Government Code. This is a discretionary exception that only protects a governmental body's interests and may be waived. As such, it does not generally constitute a compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, none of the submitted information is excepted from release on this basis. However, sections 552.101 and 552.102 can provide compelling reasons to overcome the presumption of openness; therefore, we will consider whether these claims require you to withhold the submitted information.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 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), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Information must

be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person or ordinary sensibilities, and (2) of no legitimate public interests. *See Industrial Foundation*, 540 S.W.2d 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. *Id.* at 683. This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

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)), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage). However, 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 Record Decision 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities); Gov't Code § 552.022(a)(2) (providing for required public disclosure of name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body). We have marked the information that is confidential under common law privacy and excepted from release under sections 552.101 and 552.102. None of the remaining submitted information is confidential under common law privacy.

Section 552.117(a)(1) of the Government Code 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. We note that a post office box number is not a "home address" for purposes of section 552.117.<sup>2</sup> Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at

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<sup>2</sup>*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home).

the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.<sup>3</sup> To the extent the information that we have marked pertains to a task force peace officer who is currently licensed it must be withheld from public disclosure pursuant to section 552.117(a)(2). However, if any of the individuals at issue are not currently licensed peace officers but are current or former task force employees who made timely confidentiality elections, the task force must withhold the same information pursuant to section 552.117(a)(1).

We also note that the submitted information includes Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We have marked the information that the task force must withhold pursuant to section 552.130.

We note, however, that the remaining information contains account numbers. Section 552.136 of the Government Code provides:

(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.

Gov't Code § 552.136. We have marked the account numbers that must be withheld pursuant to section 552.136 of the Government Code.

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<sup>3</sup>The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

We note that the remaining information contains social security numbers. Section 552.147 of the Government Code<sup>4</sup> provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the task force must withhold the social security numbers contained in the submitted information under section 552.147.<sup>5</sup>

In summary, the task force must withhold: 1) the information we have marked under sections 552.101 and 552.102 of the Government Code in conjunction with common law privacy 2) the information we have marked to the extent the individual at issue is a currently license peace officer under section 552.117(a)(2) of the Government Code; 3) the information we have marked must be withheld under section 552.117(a)(1) of the Government Code if the individual is not a licensed peace officer but timely elected to keep such information confidential; 4) the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code; 5) the account numbers we have marked under section 552.136 of the Government Code; and 6) the social security numbers we have marked under section 552.147 of the Government Code. The remaining 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

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<sup>4</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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); *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 Office of the Attorney General 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. 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# 232584

Enc. Submitted documents

c: Mr. Scott Henson  
ACLU of Texas Police Accountability Project  
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(w/o enclosures)