



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2007

Ms. Moira Schilke
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2007-00146

Dear Ms. Schilke:

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#268877.

Dallas County (the "county") received three requests, from the same requestor, for the personnel files of three county employees. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note that you redacted some of the submitted information, including social security numbers. Section 552.147 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. However, the county does not have

¹We 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.

a previous determination pursuant to which it may redact any other information without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001). Pursuant to section 552.301 of the Government Code, a governmental body is prohibited from withholding information from a requestor without seeking a ruling from this office unless a statute authorizes such, or the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2000) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301 of the Government Code). We note the county has redacted home addresses, telephone numbers and the marital status of the individuals at issue in the submitted information. Because we are able in this instance to ascertain the nature of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, however, the county should refrain from redacting any information that it submits to this office in seeking an open records ruling, unless the information at issue is subject to a previous determination issued by this office. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *Id.*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law 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. *See 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. Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

In this case, you state that the requestor has harassed and badgered county employees by making regular visits to your office, and has succeeded in "making several of [your] employees very uncomfortable and even fearful." You inform us that "trespass warrants have been issued against [the requestor] on several occasions." In support, you have submitted a sample of incident reports made by the Chief of Security for the Dallas County Records Building documenting these incidents. Based on the totality of the circumstances surrounding this case, we conclude that you have established the presence of special

circumstances sufficient to justify withholding the requested information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.²

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); *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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink, appearing to read "Holly R. Davis", with a long horizontal flourish extending to the right.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 268877

Enc. Submitted documents

c: Mr. Abdel Tannous
P. O. Box 4231
Dallas, Texas 75208-0231
(w/o enclosures)