



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2007

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2007-02122

Dear Ms. Smith:

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# 271795.

The Texas Department of Public Safety (the "department") received a request for the personnel file of a named department trooper. You state that you will release the majority of the requested information. You claim that the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 encompasses information made confidential by 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. Accordingly, the department must withhold the information we have

marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.¹ Gov't Code § 552.117(a)(2). Thus, you must withhold the information we have marked under section 552.117(a)(2).

We note that the submitted records also contain information related to an employee that is not a peace officer. Section 552.117(a)(1) excepts the home address, home telephone numbers, and social security numbers of employees of a governmental body, as well as information that reveals whether the employee has family members. *Id.* § 552.117(a)(1). However, in order for information to be excepted from disclosure under section 552.117(a)(1), the employee must request that this information be kept confidential prior to the date on which the request for information is received. Thus, whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, if the employee at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made, then the department must withhold the information we have marked under section 552.117(a)(1). The department may not withhold this information if the employee did not make a timely election to keep her information confidential. The remaining information must be released.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.117(a)(1). If the non-peace officer employee at issue made a request for confidentiality prior to the department receiving this request, then the department must withhold the information we have marked under section 552.117(a)(2). The remaining information must be released.

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

¹ "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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).

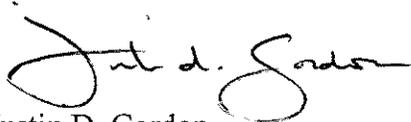
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 271795

Enc. Submitted documents

c: Mr. Mark R. Thiessen
2000 Smith Street
Houston, Texas 77002
(w/o enclosures)