



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2007

Mr. David Berman
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2007-04949

Dear Mr. Berman:

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# 277116.

The Town of Double Oak (the "town"), which you represent, received a request for 12 categories of information, primarily relating to a named former police officer, but also to the town's police department and its current and former employees. You state that most of the information will be released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.127, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

This office has issued a previous determination allowing all governmental bodies to redact certain personal information of peace officers under section 552.117(a)(2) of the Government Code. See Open Records Decision No. 670 (2001) (previous determination that

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.

phone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of “peace officer” set forth in article 2.12 of Texas Code of Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies). Accordingly, the town may withhold information subject to section 552.117(a)(2) without seeking a decision from this office. We agree the information you marked and the additional information we marked are excepted under section 552.117(a)(2). However, the requestor has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise excepted from disclosure to the public, because the information pertains to the requestor’s client. Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person’s privacy interests). *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Accordingly, the requestor’s client’s section 552.117(a)(2) information must be released.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by common law privacy. Gov’t Code § 552.101. 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(a). 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. Accordingly, we address the town’s section 552.102 claim for this information in conjunction with its common law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure 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.*, 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 found that the following types of information are excepted from required public disclosure under common law privacy: some

²As our ruling for this information is dispositive, we do not address your argument under section 552.147 of the Government Code.

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). Upon review, we find that most of the information you marked is the type of information protected by common law privacy. The town must withhold such information pertaining to its employees under section 552.101. However, the requestor has a right of access to the submitted information, which is her client's information, pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b). In addition, we have marked the information that is not protected by common law privacy and must be released.

We note that some of the submitted information may be excepted under section 552.1175 of the Government Code, which provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). With the exception of the business phone number, the information you marked concerning police officers not employed by the town is excepted under section 552.1175. If the peace officers at issue notify the town that they choose to keep the types of information in subsection (b) confidential in accordance with section 552.1175(2), the town must withhold this information pursuant to section 552.1175 of the Government Code.

Section 552.127 excepts information from public disclosure if the information identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person. Gov't Code § 552.127. You explain that the information you have marked pertains to participants in the town's neighborhood watch program. We understand that the town neighborhood watch program works in association with the town's police department to reduce crime. Upon review, we find that you must withhold the participants' identifying information we have marked.

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.” *Id.* § 552.130. We agree with the town that the Texas motor vehicle record information it has marked are the types excepted from disclosure under this section, and would note that Texas driver’s license expiration dates are also excepted. Some of the Texas motor vehicle record information at issue pertains to the requestor’s client; therefore, pursuant to section 552.023, the requestor has a right of access to this information. *See id.* § 552.023(b). The town must withhold the Texas license plate numbers we have marked under section 552.130.

Section 552.136 of the Government Code 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.” *Id.* § 552.136. An access device number is one that 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.” *Id.* We agree with the town that the account numbers it has marked are the types excepted under section 552.136. However, the account numbers at issue in the submitted information pertain to the requestor’s client. Therefore, pursuant to section 552.023, the requestor has a right of access to this information. *See id.* § 552.023(b).

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 of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. The e-mail addresses you have marked do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the relevant members of the public have consented to the release of these e-mail addresses. Therefore, the town must withhold the e-mail addresses you have marked under section 552.137.

In summary, with the exception of the requestor’s client’s information, the town must withhold the types of information identified as being protected by common law privacy in conjunction with section 552.101 of the Government Code. With the exception of the requestor’s client’s information, the town must withhold the types of information that it has marked and we have marked under section 552.117(a)(2). If the peace officers at issue notify the town that they choose to keep the types of information identified in section 552.1175 confidential, the town must comply. The town must withhold the identifying information of the town’s neighborhood watch participants that we have marked pursuant to section 552.127. With the exception of the information pertaining to the requestor’s client, the town must withhold the types of information identified as being subject to

section 552.130 and the Texas license plate numbers we have marked pursuant to section 552.130. With the exception of the account numbers pertaining to the requestor's client, the town must withhold this type of account number pursuant to section 552.136. The town must withhold the e-mail addresses it has marked under section 552.137. The remaining 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).

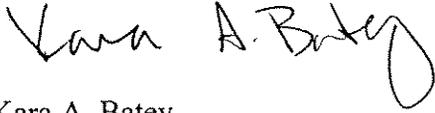
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, looping "y" at the end.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 277116

Enc. Submitted documents

c: Ms. Rhonda E. Cates
Attorney at Law
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(w/o enclosures)