



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2007

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2007-08075

Dear Ms. Barton:

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 #282122.

The Dallas County Constable's Office, Precinct 5 (the "constable") received a request for information relating to a named individual's personnel files, internal affairs investigation files, and the named individual's demotion. You state that you are releasing all responsive information to the requestor, except for two internal affairs investigation files. You claim that the internal affairs files are excepted from disclosure under section 552.101 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 the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas 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. 540 S.W.2d at 683.

You assert that the submitted information is highly intimate and embarrassing. However, we find that most of it is of legitimate public interest. Although the officer in question was off duty when the incidents occurred, his conduct warranted official internal affairs

investigations and a recommendation to terminate his employment as a public servant. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 405 at 2-3 (1983); *cf.* Open Records Decision No. 484 (1987) (public's interest in knowing how police departments resolve complaints against police officer ordinarily outweighs officer's privacy interest). Accordingly, only the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. *See generally* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

We note that some of the submitted information is excepted under section 552.117(a)(2) of the Government Code.¹ Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election to keep information confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. The protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). Accordingly, we have marked personal information of the constable's employees that must be withheld under section 552.117(a)(2) of the Government Code. In addition, the records contain telephone numbers and family information of peace officers who do not appear to be employees of the constable. If the information we have marked is indeed the home telephone numbers and family information of constable employees, that information must also be withheld under section 552.117(a)(2). If the information we have marked is not the personal information of constable employees, then section 552.117 does not apply.

However, the home telephone numbers and family information we have marked may be subject to section 552.1175 of the Government Code.

Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

¹The Office of the Attorney General will raise a mandatory exception like section 552.117(a)(2) on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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.

Gov't Code § 552.1175(a), (b). If the home telephone numbers and family information we have marked concern peace officers with other law enforcement agencies, and the officer elected to restrict access to this information in accordance with section 552.1175, the constable must withhold this information. If the officer did not elect to restrict access under section 552.1175, the information must be released to the requestor.

In summary, the constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable must also withhold the information we have marked under section 552.117 of the Government Code. If the home telephone numbers and family information we have marked pertain to constable employees, that information must be withheld under section 552.117(a)(2) of the Government Code. If the home telephone numbers and family information we have marked pertain to employees of other law enforcement agencies, that information must be withheld under section 552.1175 of the Government Code. 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

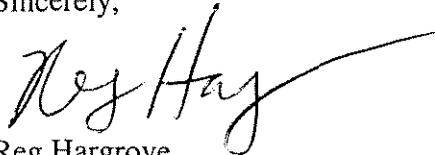
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 282122

Enc. Submitted documents

c: Mr. Lance F. Wyatt
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(w/o enclosures)