



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2007

Ms. Patricia E. Carls
Brown & Carls LLP
106 East 6th Street Suite 550
Austin, Texas 78701

OR2007-10131

Dear Ms. Carls:

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# 286639.

The Georgetown Police Department (the "department"), which you represent, received a request for police and internal investigation reports involving a named individual and comments regarding a related lawsuit. You state that the department has no information that is responsive to the request for comments. You have submitted information that the department seeks to withhold under sections 552.101 and 552.103 of the Government Code. You also inform us that some of the submitted information is the subject of a previous open records letter ruling. We have considered your arguments and have reviewed the submitted information.

You state that the information submitted as Exhibit D-3 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2006-14204 (2006). You state that there has been no change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the department may continue to rely on Open Records Letter No. 2006-14204 with respect to Exhibit D-3.¹ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

You seek to withhold the rest of the submitted information under section 552.103 of the Government Code. We note, however, that the remaining information consists of a

¹As we are able to make this determination, we need not address your other arguments against disclosure of that information.

completed report and as such is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108. Gov’t Code § 552.022(a)(1). You do not claim an exception to disclosure under section 552.108. Section 552.103, which you do claim, is a discretionary exception that protects a governmental body’s interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (Gov’t Code § 552.103 may be waived); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022(a)(1). We therefore conclude that the department may not withhold any of the remaining information under section 552.103.

Nevertheless, section 552.101 of the Government Code is applicable to some of the remaining information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the common-law right to privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked medical information that the department must withhold under section 552.101 in conjunction with common-law privacy.

In summary: (1) the department may continue to rely on Open Records Letter No. 2006-14204 with respect to Exhibit D-3; and (2) the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the submitted 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

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).

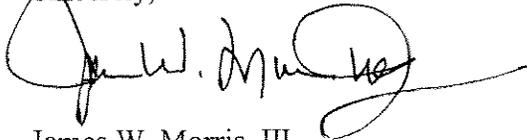
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 286639

Enc: Submitted information

c: Ms. Lisa Ogle
Austin American-Statesman
203 East Main Street Suite 102
Round Rock, Texas 78664
(w/o enclosures)