



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2007

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2007-12861

Dear Mr. Toscano:

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# 290592.

The City of Dallas (the "city") received a request for information regarding a specified citizen's review board hearing. You state you will release some information to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-08957 (2005). We note, however, that the relevant law has changed since the issuance of our previous ruling.² Additionally, in this instance, the requestor informs us 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.

²Pursuant to section 58.007(e) of the Family Code, "[l]aw enforcement records and files concerning a child may be inspected or copied by . . . the child, and the child's parent or guardian." Act of May 29, 1995, 74th Leg., R.S., ch. 262, 1995 Tex. Gen. Laws 2517, 2552-53, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 879, § 1, 2007 Tex. Sess. Law. Serv. 1896.

she is the attorney for the juvenile at issue in the current request, and may have a right of access to otherwise confidential information. Thus, the city may not rely on that ruling as a previous determination.³ As you have failed to submit that information to this office for review, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(e), .302.

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 common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. We also note that common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. However, as previously noted, the requestor is the attorney for the juvenile at issue in the current request, and his mother. Section 552.023 of the Government Code gives a person or a person's authorized representative a “special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.” Gov't Code § 552.023. Therefore, the requestor has a special right of access to the juvenile's identifying information, and the city may not withhold any of the information at issue on privacy grounds under section 552.101.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* §§ 552.024, .117(a)(1). 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). You inform us, and the submitted information reflects, that the employee at issue made a timely election for confidentiality under section 552.024. We therefore conclude that the city must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

³*See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary the city must withhold the information you have marked under section 552.117 of the Government Code. The remaining requested information must be released to the requestor.⁴

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).

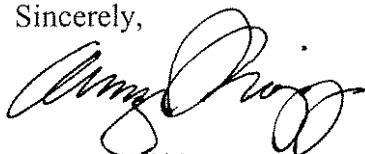
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

⁴Because some of the information being released is confidential with respect to the general public, if the city receives a future request for this information from an individual other than the requestor, the city should again seek our decision.

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 "Amy Shipp", written in a cursive style.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 290592

Enc. Submitted documents

c: Ms. Noemi A. Collie, P.C.
434 West 12th Street
Dallas, Texas 75208
(w/o enclosures)