



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 7, 2008

Mr. John Ohnemiller  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2008-09126

Dear Mr. Ohnemiller:

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# 315029.

The City of Midland (the "city") received a request for a specified incident report involving the discharge of a firearm by an off-duty Midland police officer and the related Shoot Team investigative report. You state that you have released basic information pertaining to the requested incident report.<sup>1</sup> You claim that portions of the submitted incident report, Investigative Service Bureau ("ISB") memorandum, and interoffice memorandum 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. This exception 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of

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<sup>1</sup>See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

this test must be demonstrated. *Id.* at 681-82. One of the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* is attempted suicide. *Id.* at 683. You assert that a portion of the submitted information is confidential under common-law privacy based on our analysis in Open Records Decision No. 422 (1984). Open Records Decision No. 422 dealt with a request for the details of a shooting incident, including whether the shooting was self-inflicted and whether it was an attempted suicide or was accidental. In that decision, we found that there was "a presumption that the details of any instance of a self-inflicted wound, beyond the mere fact that it is self-inflicted, are excepted from disclosure by common-law privacy." ORD 422 at 2. We also found that the presumption could be overcome by a demonstration that the public has substantial interest in the particular incident. *Id.* In the intervening years since the issuance of Open Records Decision No. 422 this office has changed its analysis and we no longer find there is a presumption that the details of self-inflicted injury are protected by common-law privacy. We now determine whether the details of an self-inflicted injury are intimate or embarrassing on a case-by-case basis.

Based on your reference to Open Records Decision 422, we understand you to argue that the details of the shooting incident in the submitted documents are confidential under common-law privacy. However, upon review of the submitted documents, we find that none of the details of the incident are intimate and embarrassing. Therefore, you may not withhold the details of the incident in their entirety under section 552.101 in conjunction with common-law privacy. You also state that you have highlighted information in the submitted documents which you argue is otherwise protected under common-law privacy. We note, however, that you have not highlighted any portion of the submitted documents. Further, you have not made any specific argument explaining, nor can we discern from our review of the submitted documents, how any of the information in the report is otherwise intimate and embarrassing. We therefore conclude that the city may not withhold the submitted documents under section 552.101 in conjunction with common-law privacy.

We note that the city is required to withhold a portion of the submitted ISB memorandum and the interoffice memorandum under section 552.117(a)(2) of the Government Code.<sup>2</sup> Section 552.117(a)(2) excepts from required public disclosure the current and former home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). Section 552.117 only applies to records that the governmental body is holding in an employment capacity. Therefore, since the submitted police report is not held by the city in its employment capacity, the city may not withhold the officer's personal information in the submitted police report under section 552.117(a)(2). However, it appears that the remaining documents are held by the

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<sup>2</sup>Unlike other exceptions to disclosure under the Act, this office will raise sections 552.117 and 552.1175 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

city in its capacity as employer. Thus, the city must withhold the information we have marked in the ISB memorandum and the interoffice memorandum under section 552.117(a)(2).

We note, however, that section 552.1175 of the Government Code may apply to a portion of the information in the submitted incident report. This section provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(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.

*Id.* § 552.1175(a), (b). Thus, the city must withhold the personal information we have marked in the submitted incident report under section 552.1175, if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). If no election is made, the city may not withhold this information under section 552.1175.

In summary, the city must withhold the information we have marked in the submitted ISB memorandum and the interoffice memorandum under section 552.117(a)(2) of the Government Code. The city must withhold the personal information we have marked in the submitted incident report under section 552.1175 if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/mcf

Ref: ID# 315029

Enc. Submitted documents

c: Mr. George Johns  
P.O. Box 4642  
Midland, Texas 79704  
(w/o enclosures)