



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2008

Ms. Chelsea Thornton
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2008-09427

Dear Ms. Thornton:

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# 313839.

The Office of the Governor (the "governor") received four requests from the same requestor for portions of Governor Perry's calendar for specified time periods.¹ You state that you have released some information to the requestor, but claim that the submitted information is exempted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code exempts 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 that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2)

¹We note that the requestor narrowed the scope of his requests to exclude locations, dates, and times of events. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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.

is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of “special circumstances.” See Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

The governor asserts that the information at issue must be withheld because the privacy rights of the Governor include the right to be safe from physical harm. The governor states that, “the subject matter of some events inherently reveals the time and location of the event.” For example, the governor states that “if only ‘Aggie Muster 2008’ is listed for a particular day, one could quickly determine the location and time of the annual Aggie Muster.” Additionally, the governor states that “by providing a schedule to the requestor with the location and times redacted, the order of Governor Perry’s day would still be revealed.” The governor explains that “[b]y doing research to determine the location and time of each item on the schedule, combined with the order of his day being revealed, it would be very easy to determine when and where [Governor Perry] would be at any given time.” Thus, the governor asserts that the requested information reveals detailed time lines of Governor Perry’s future daily activities, and that release of this information would be valuable for someone who intended to cause him harm. Based on these representations and our review, we determine that the release of the information at issue would place the Governor in imminent threat of physical danger. Accordingly, the governor must withhold the information at issue under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common-law privacy. As our ruling is dispositive, we do not address your remaining argument against disclosure.

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), (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

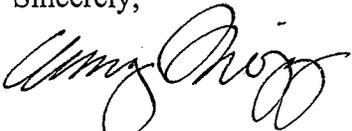
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental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



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

ALS/mcf

Ref: ID# 313839

Enc. Submitted documents

c: Mr. Shane Allen
Assignments Manager
KXAN
908 West Martin Luther King Jr. Boulevard
Austin, Texas 78701
(w/o enclosures)