



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2008

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2008-11984

Dear Ms. Ladd:

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# 320071.

The Town of Flower Mound (the "town"), which you represent, received a request for (1) a copy of a specified recorded interview, (2) copies of all written or recorded communications between the town's administration, the town's human resources department, and a named individual regarding a grievance and rebuttal filed by the requestor, and (3) a copy of a named employee's personnel file. You state that the town has released some of the requested information to the requestor.¹ You claim that portions of the submitted documents are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

Initially, we note, and you acknowledge, that you did not comply with the time periods prescribed by sections 552.301(b) and (e) of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301 the information at issue is presumed public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See id.* Generally, a compelling reason exists when some other source of law makes the information confidential or third

¹You have verbally informed us that the released information includes a copy of the recorded interview. Therefore, this ruling does not address the blank CD you submitted to this office, and the town need not release it in response to this request.

party interests are at stake. *See* Open Records Decision No. 630 at 3 (1994). Because section 552.117 of the Government Code can provide a compelling reason to withhold information, we will address your argument concerning this exception.

Section 552.117(a)(1) of the Government Code 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. *See* Gov't Code §§ 552.117(a)(1), .024. We note that section 552.117 also encompasses a personal cellular telephone number, unless the service is paid for by a governmental body. *See* Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cell phone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have submitted documentation showing that the named employee elected to keep his personal information confidential before the town received the instant request for information. Accordingly, the town must withhold the information we have marked under section 552.117 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note that information relating to public employees and public employment is generally a matter of legitimate public interest. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has legitimate interest in public employee's qualifications, work performance, and circumstances of employee's resignation or termination), 423 at 2 (1984) (scope of public employee privacy is narrow). However, this office has held that the compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information, and notes that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that the compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find that a portion of the submitted

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

information is protected under common-law privacy. Therefore, the town must withhold the information we have marked on that basis under section 552.101 of the Government Code.

Next, we note that some of the submitted information is protected by section 552.130 of the Government Code, which excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, the town must withhold the information we have marked under section 552.130 of the Government Code.

Finally, we note that the submitted documents contain e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body. You do not inform us that members of the public have affirmatively consented to the release of their e-mail addresses. Accordingly, the town must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, the town must withhold the information we have marked under (1) section 552.117 of the Government Code, (2) section 552.101 of the Government Code in conjunction with common-law privacy, (3) section 552.130 of the Government Code, and (4) section 552.137 of the Government Code. The remaining documents 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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 320071

Enc. Submitted documents

c: Ms. Denice Thomas
Town of Flower Mound - Senior Planner
2121 Cross Timbers Road
Flower Mound, Texas 75028
(w/o enclosures)