



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2008

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2008-15742

Dear Ms. Alexander:

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# 328661.

The Texas Department of Transportation (the "department") received a request for "a list of all uses of state-owned planes by [the governor], including destinations and other passengers." You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the Office of the Governor (the "Governor"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You inform us a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

No. 2008 -07615 (2008).<sup>2</sup> You do not represent that the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, the department must continue to rely on that ruling as a previous determination and withhold the information at issue in that ruling in accordance with Open Records Letter No. 2008-07615. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). However, we will address your argument under section 552.101 for the remaining responsive information not subject to the previous determination.

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 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) 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 department and Governor assert that all of the requested information must be withheld because the privacy rights of the Governor include the right to be safe from physical harm. You inform us that the Department of Public Safety (the “DPS”) is responsible for the personal safety of the Governor and the Governor’s family. The department and the Governor state that the Governor’s protective detail (the “GPD”), staffed by DPS, provides security and protection for the Governor, the Governor’s family, and, when assigned, members of the state legislative and judicial branches. The department and the Governor explain that the submitted information reveals the number of officers protecting the Governor, the Governor’s family, and others, and that the DPS and GPD do not publicly identify the number of officers protecting these individuals on a permanent basis or at any particular time. The department and the Governor also state that the release of this information would be valuable for someone who intended to cause the Governor harm. Based on these representations and our review, we determine the release of some of the submitted information would place the Governor in imminent threat of physical danger. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common-law privacy. We find, however, that release of the remaining information

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<sup>2</sup>While the instant request for information covers the time period from January 2007 to September 12, 2008, the previous request for information covered October 1, 2007 to May 6, 2008.

would not place the Governor in imminent threat of physical danger. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with the "special circumstances" aspect of common-law privacy, but must instead 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).

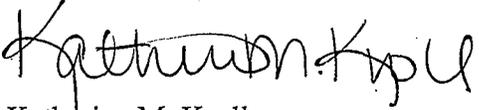
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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# 328661

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Katherine R. Fite  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711  
(w/o enclosures)

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78765-4087  
(w/o enclosures)