



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2008

Ms. Pamela Smith
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2008-17590

Dear Ms. Smith:

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# 331156 (DPS Request #08-1843).

The Texas Department of Public Safety ("DPS") received a request for information "related to complaints about inaccurate information on the Texas Sex Offender Registration Program computerized central database" for a specified period of time. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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, which 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*

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.

Bd., 540 S.W.2d 668, 685 (Tex. 1976). 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in instances of sexual assault, where it is demonstrated that the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. In this instance, you seek to withhold, in their entirety, all of the requested complaints that contain identifying information of sex assault victims. Although you seek to withhold this information in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire complaint must be withheld on the basis of common-law privacy. However, we agree that the information we have marked within these complaints is highly embarrassing and not of legitimate public interest. Accordingly, DPS must withhold the information we have marked within the complaints under section 552.101 in conjunction with common-law privacy.

We next address your assertion that the user IDs you have marked are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You explain that the marked user IDs may be used, "to access credits that have been purchased to pay for records searches." Based on your representations and our review, we agree that DPS must withhold the user IDs you have marked under section 552.136 of the Government Code.

Next, we address your argument under section 552.137 of the Government Code for the e-mail addresses you have marked in the representative sample. Section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of

communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter,” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You inform us the e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). You state that the owners of these e-mail addresses have not consented to their public disclosure. We therefore agree that the e-mail addresses you have marked, as well as the additional information we have marked, must be withheld under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, DPS must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DPS must also withhold the information you have marked under section 552.136 of the Government Code. DPS must also withhold the e-mail addresses you have marked, as well as the additional information we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The remaining information must be released.

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/jb

Ref: ID# 331156

Enc. Submitted documents

cc: Requestor
(w/o enclosures)