



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

Honorable James W. (Bill) Gooden
Kendall County Judge
204 East San Antonio Street, Suite 1
Boerne, Texas 78006

OR96-0029

Dear Judge Gooden:

You ask for reconsideration of Open Records Letter No. 94-689 (1994), which concluded that Kendall County (the "county") must release "the names and addresses of the citizens of Kendall County which can be found upon a list entitled '911 Addresses.'" Your request was assigned ID# 30332.

Open Records Letter No. 94-689 determined that the requested information was not excepted from required public disclosure because even though the county had entered into an agreement with the Hill Country Telephone Cooperative, Inc. (the "telephone cooperative"), such agreement was not authorized by statute. A governmental body's agreement to keep information confidential cannot serve to except that information from required public disclosure unless the governmental body is specifically authorized by statute to enter into such an agreement. Open Records Decision No. 444 (1986).

You now raise new arguments for withholding the information at issue. You claim that the information is protected from disclosure based on the privacy rights of individuals who fit within certain categories, including individuals with abusive spouses or former spouses, residents of women's shelters, and celebrities. You also raise section 552.117 of the Government Code. Finally, you urge that the information must be withheld because it is proprietary information of the telephone cooperative.

The Open Records Act requires a governmental body to request an open records decision from this office within ten days of receiving a request for information. See Gov't Code § 552.301(a). When a governmental body fails to request a decision within ten days, the information is presumed public. *Id.* § 552.302. Thus, when a governmental body raises additional grounds for excepting requested information from disclosure after the

deadline has passed, the governmental body must show compelling reasons why the information should be withheld. *See Open Records Decision No. 515 (1988) at 6.*

The presumption that the requested information is public may be overcome if an exception designed to protect the interest of a third party is applicable. *See Open Records Decision No. 552 (1990) at 1.* Section 552.101 in conjunction with the common-law right to privacy and section 552.117 are such exceptions.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The requested information is a list of the addresses of residents of Kendall County.¹ We believe that the addresses of residents of a county are generally public information. However, a governmental body may withhold a particular address if it demonstrates the existence of special circumstances in which disclosure of an individual's home address constitutes an unwarranted invasion of that individual's privacy. *Open Records Decision Nos. 532 (1989) at 2, 169 (1977) at 6.* The special circumstances must be more than a desire for privacy or a generalized fear of harassment or retribution. *See id.* Thus, the fact that an address is not listed in the phone book does not by itself render that address confidential under the common-law right to privacy. Special circumstances may include efforts to protect an individual's home address, such as moving to avoid harassment, or evidence that an individual is under an imminent threat of physical danger. *See Open Records Decision No. 169 (1977) at 6-7.* Not listing one's home address and telephone number in the telephone book is relevant to a determination that special circumstances exist. *See Open Records Decision No. 532 (1989) at 2.*

We think it is possible that special circumstances may exist as to some of the individuals on the requested information here. The county must isolate the cases for which special circumstances exist in which disclosure of a home address would constitute an unwarranted invasion of privacy and submit to this office arguments for withholding such addresses from required disclosure within ten days of receipt of this letter. *See Open Records Decision No. 169 (1977) at 7.* Absent a showing of special circumstances, the county may not withhold any of the information on the list based on common-law privacy.

¹The requestor stated that he did not seek the phone numbers on the list. Thus, we need not address here your concerns about the disclosure of unlisted phone numbers.

You raise section 552.117,² which provides as follows:

Information is excepted from [required public disclosure] if it is information relating to:

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code; or

(2) the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice, or the home or employment address or telephone number, name, or social security number of a family member of the employee.

We first consider section 552.117(1)(A), which excepts from required public disclosure the home address or telephone number of a current or former official or employee of a governmental body, except as otherwise provided by section 552.024. Section 552.024 provides a mechanism by which an employee, official, former employee or official can elect to protect information about that person's home address and telephone number. *See* Open Records Decision No. 530 (1989). Thus, pursuant to section 552.117(a)(A), the county must withhold the addresses of those county employees who have elected to keep the information confidential in accordance with section 552.024.

We turn to part (B) of section 552.117(1), which excepts the home address and phone numbers of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, and a security officer commissioned under section 51.212 of the Education Code. We conclude that the county must withhold the home address of any individual who fits the definition of peace officer set forth in article 2.12 of the Code of Criminal

²We note that the open records laws, including section 552.117 of the Government Code, were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

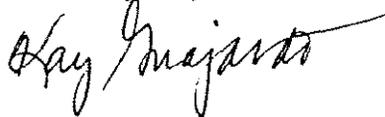
Procedure or the definition of security officer set out in section 51.212 of the Education Code.³

Subsection (2) of section 552.117 protects the home address of an employee of the Texas Department of Criminal Justice, as well as the home address of a family member of such employee. This provision does not require such employee to take action to secure the protection. Thus, the county must withhold from required public disclosure the address of any employee of the Texas Department of Criminal Justice and the address of any family member of such employee.

Finally, you suggest that as the telephone cooperative assesses an additional charge for those telephone users who desire an unlisted telephone number, the telephone numbers of those individuals with unlisted telephone numbers is the telephone cooperative's proprietary information. We need not decide whether these facts support a conclusion that the information may be excepted from required public disclosure since the requestor here does not seek the telephone numbers on the list.⁴

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 30332

³It is not necessary that a peace officer or a security officer take action to obtain the protection of section 552.117. See Open Records Decision No. 532 (1989) at 3

⁴We note that several provisions in the Health and Safety Code make confidential "the telephone number of the subscribers and the address associated with the number" that a service supplier furnishes an emergency communication district. See Health & Safety Code §§ 772.118(c), .218(c), .318(c); see also *id.* §§ 772.001(16) (defining service supplier). However, as you informed us that the population of the county is less than 20,000, we need not consider the application of these provisions to the information at issue.

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