



Office of the Attorney General
State of Texas

October 25, 1996

DAN MORALES
ATTORNEY GENERAL

Ms. Donna Garcia Davidson
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR96-1928

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 101537, 101919, 102269.

The Governor's Office has received three requests for information and records concerning the Governor's judicial appointments. You state that you have already or will release most of the requested information. You contend, however, that certain portions of the documents are excepted from required public disclosure by sections 552.101 and 552.111 of the Government Code. You have submitted a representative sample of the information that you seek to withhold.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (*illness from severe emotional and job-related stress*), and 455 (1987) (*prescription drugs*,

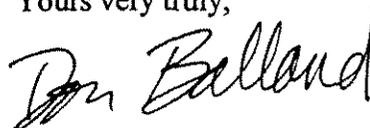
¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize 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.

illnesses, operations, and physical handicaps). We find that some of the submitted information is protected by a right to privacy. We have marked the information that must be withheld under section 552.101 of the Government Code as it incorporates common-law privacy.

You also argue that some portions of the requested records are protected from disclosure by section 552.111 of the Government Code. You have marked this information. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111, however, does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5. After reviewing the materials, we agree that the information you have marked may be withheld pursuant to section 552.111.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID#s 101537, 101919, 102269

Enclosures: Marked documents

cc: Mr. Adam Hirsch
914 West 26th Street #203
Austin, Texas 78705
(w/o enclosures)

Mr. Neil Carlton Moss
121 N. First Street
Lufkin, Texas 75901
(w/o enclosures)

Ms. Judy A. Foster
Publication Coordinator
The Judicial Directory
2951 Marina Bay Drive # 130-314
League City, Texas 77573
(w/o enclosures)