



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 18, 1998

Mr. Charles J. Breaux, Jr.  
Legal Administrative Assistant  
Jefferson County Sheriff's Office  
P.O. Box 2950  
Beaumont, Texas 77704

OR98-0472

Dear Mr. Breaux:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113181.

The Jefferson County Sheriff (the "sheriff") received a request for "a copy of Billy Rhea's application for employment with the Jefferson County Sheriff's Office." You assert that portions of the requested information are excepted from required public disclosure by sections 552.101, 552.102, 552.117 and 552.130 of the Government Code.

Section 552.117 of the Government Code excepts from required public disclosure, among other things:

information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

You inform us that Mr. Rhea is a peace officer as defined by Article 2.12 of the Code of Criminal Procedure. We agree that section 552.117 excepts from disclosure the information expressly delineated in section 552.117 as well as Mr. Rhea's former home addresses. See Open Records Decision No. 622 (1994).

Section 552.130 of the Government Code provides as follows

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

You assert that section 552.130 applies to Mr. Rhea's driver's license number and to Mr. Rhea's answers to various questions about his driving record. We conclude that section 552.130 applies to the driver's license number, but not to the questions.

We will address the public release of information we have not found to be covered by the exceptions we have already discussed. You assert that the release of Mr. Rhea's answers to questions about his driving record and his resume would violate Mr. Rhea's common-law right to privacy as well as his constitutional right to privacy. Section 552.101 excepts from required public disclosure information that is confidential by law, either constitutional, statutory or by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. 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.*

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests: (1) an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public's right to know the information. See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5<sup>th</sup> Cir. 1985)).

We conclude that the information at issue is not protected from public disclosure by either the common-law right to privacy or the constitutional right to privacy. See Open Records Decision No. 470 (1987).

You raise section 15.101 of title 37 of the Texas Administrative Code. You suggest that this regulation may prohibit the release of the answers to the driving record questions. This regulation concerns the record the Texas Department of Public Safety is required to maintain concerning licensed drivers. It does not purport to make driving record information confidential. Furthermore, administrative regulations cannot amend the Open Records Act by creating new exceptions. See Open Records Decision No. 527 (1989). Absent specific authority, a governmental body may not promulgate a rule designating information as confidential. See Open Records Decision No. 484 (1987). Thus, the sheriff may not withhold the information based on section 15.101 of title 37 of the Texas Administrative Code.

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 Hastings  
Assistant Attorney General  
Open Records Division

Ref.: ID# 113181

Enclosures: Submitted documents

cc: Ms. Iris Robinson  
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(w/o enclosures)