

January 7, 1999

Ms. Linda Wiegman, Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

OR99-0033

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120892.

The Department of Health (the "department") received a request for "[d]etails of any personnel actions taken within the past year against any Texas Department of Health employees who misused the Internet by viewing pornography or pornographic Web sites." You seek to withhold portions of the requested information under sections 552.101, 552.108, and 552.117. You submitted the information, or representative samples thereof, which you seek to withhold.¹

Section 552.108 excepts from required public disclosure in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

¹In reaching our conclusion, 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 No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

....

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You seek to withhold portions of the submitted information under section 552.108, subsections (a)(1) and (b)(1). You advise that the information relates to ongoing investigations by the department into suspected criminal activities of the employees who are the subject of the request, and also indicate that the department is in the process of referring the matter to the District Attorney's office. Moreover, you contend that release of some of the information would reveal law enforcement techniques and interfere with the current as well as future investigations.

We have reviewed your arguments and the information at issue. Assuming that the District Attorney's office has now taken under consideration the cases to which the requested information relates, or that the department still intends to refer these cases to the District Attorney, we conclude that you may generally withhold the information at issue under section 552.108. *See* Open Record Decision No. 493 (1988) (non-law enforcement agency may invoke section 552.108 for matters which the agency intends to report to a law enforcement agency).

Please note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The department must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

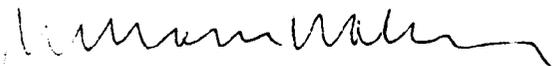
You also seek to withhold portions of "two intent to terminate letters, two letters of resignation, and two personnel action forms" under the common-law privacy aspect of section 552.101. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within 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). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have examined the information at issue, and conclude that, since it pertains to public employees, there is a legitimate public interest in these materials. Accordingly, none of the submitted information for which you claim such protection is protected by common-law privacy.

You note too, that one of the above-mentioned personnel action forms contain information which must be withheld under section 552.117. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. You advise that the employee who is the subject of the personnel action form in question has opted to withhold from public disclosure information covered by section 552.117. If the employee had so opted as of the time of the request for the information here, you must withhold this information under section 552.117. Open Records Decision Nos. 530 (1989), 482 (1987), 455 (1987).

In any case, social security numbers that were obtained or maintained by the department pursuant to a provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 552.101 -- which protects, *inter alia*, information made confidential by statute -- in conjunction with section 405(c)(2)(C)(viii) of title 42 of the United States Code. Except as noted, you must release the requested information.

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 have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref.: ID# 120892

Enclosures: Submitted documents

cc: Ms. Denise Gamino
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(w/o enclosures)