



August 3, 1999

Ms. Judy Doran  
Open Records Coordinator  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR99-2192

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126193.

The Texas Parks and Wildlife Department (the "department") received a request for a copy of the department's personnel manual and information related to a particular personnel matter. You inform us that the requestor has been provided with copies of all responsive documents except the two documents you have submitted to this office for review. You contend that the submitted documents are excepted from disclosure under sections 552.101 and 552.103 of the Government Code.

Initially, we note that you received the request for information on April 28, 1999, but that you invoked section 552.103 for the first time on May 18, 1999. Section 552.301(a) of the Government Code states that a governmental body must raise exceptions to disclosure not later than tenth business day after receiving a written request for information. When a governmental body fails to timely raise an exception, the information for which the governmental body claims that exception is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Section 552.103 is not compelling and does not overcome the presumption of openness. *See* Open Records Decision Nos. 551 (1990), 515 (1988). Therefore, we must conclude that section 552.103 does not except the submitted documents from disclosure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the common-law right to privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. Having carefully reviewed the submitted documents, we find that they do not contain any information that is protected by the common-law right to privacy. *See* Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). Therefore, the department must release the documents to the requestor.

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.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 126193

Encl. Submitted documents

cc: Mr. David D. Piper  
N6010 Highway 42  
Kewaunee, Wisconsin 54216  
(w/o enclosures)