



November 16, 1999

Maureen E. Ray
Assistant General Counsel
State Bar of Texas
P.O. Box 12487
Capitol Station
Austin, Texas 78711-2487

OR99-3268

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, (the "PIA") chapter 552 of the Government Code. Your request was assigned ID# 129546.

The State Bar of Texas (the "SBOT") received a request for "a copy of computer 'cookie' files for everyone who has handled, refused to deal with or through whom our open records requests have passed." You argue that the requested information is not subject to the PIA. In addition, you claim that the requested information is excepted from disclosure based on section 552.101 of the Government Code. You have submitted representative samples of the requested information.¹

In general, the PIA requires the disclosure of a governmental body's "public information." Gov't Code §§ 552.001, .002. "Public information" means

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) (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.

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a).

You argue that the requested computer “cookies” are not within this definition of “public information.” You state

[d]uring their lunch breaks or other personal time during the work day, employees of the SBOT are free to use their computers for their own informational use. Some may visit web sites, thereby adding to cookies a history of such use. It is this informational use that does not constitute public information. Such use history is not created in connection with the transaction of official business; nor is it created “for a governmental body.”

The information is maintained on SBOT computers. As this information exists on SBOT computers used by SBOT employees and consists of information about the use of the Internet by SBOT employees, we conclude that the information is subject to the PIA. *See* Open Records Letter Nos. 99-2309 (1999) (concerning “cookie” files of employees of University of Texas Investment Management Company), 99-2306 (1999) (concerning “cookie” files of employees of University of Texas at Austin and University of Texas System).

Section 552.101 of the Government Code exempts 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.*

We have considered your arguments and reviewed the submitted information. We conclude that the SBOT has not established that the information is protected from required public disclosure based on the common-law right to privacy. Thus, you must release the requested information.

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.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref.: ID# 129546

encl. Submitted documents

cc: Mr. Stephen N. Lisson
P.O. Box 2013
Austin, Texas 78768-2013
(w/o enclosures)