



April 24, 2000

Mr. Clay T. Grover
Feldman & Rogers, L.L.P.
Attorneys at Law
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2000-0467A

Dear Mr. Grover:

You ask this office to examine Open Records Letter No. 2000-0467 (2000) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134275.

The Longview Independent School District (the "district") received a request for cellular telephone charges or invoices during January 1, 1998 to December 13, 1999 and the persons assigned to use the cellular numbers. You claimed that some of the requested "information pertaining to the employee's private, personal communications" was excepted from disclosure by sections 552.101 and 552.102 of the Government Code. In Open Records Letter No. 2000-0270 (2000) we stated that "[the district had] not, however, [submitted] to this office copies or representative samples of the specific information that was requested." Consequently, we found that the district could not withhold the requested information. You ask this office to examine Open Records Letter No. 2000-0467 (2000) in light of your contention that this office mistakenly found that the city did not provide this office with the requested information that you wish to withhold. Where this office determines that a factual error is made when determining a governmental body's timeliness in submitting required information in the decision process under section 552.301, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

You have informed this office that you did submit this information on January 17, 2000. We have reviewed our records and agree that you did indeed timely submit the information on January 17, 2000. In that correspondence, you seek to withhold several highlighted telephone numbers that you characterize as numbers that relate to private communications. You state that your submission is a representative sample of the information requested. We will examine Open Records Letter No. 2000-0467 (2000) to the extent that it involves the requested cellular telephone numbers you seek to withhold.

Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act.

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 at 1 (1992). We have previously stated that, absent some special circumstance, home addresses and telephone numbers are not protected from disclosure by a right of privacy. Open Records Decision Nos. 455 at 6-7 (1987); 169 (1977). Nor do we believe that the numbers of personal calls made by public employees is protected by a right of privacy. *Cf.* Open Records Decision Nos. 506 (1988) (public officials and employees have a minimal expectation of privacy); 470 at 4 (1987) (public has legitimate interest in job performance of public employees; public employee's job performance does not generally constitute his private affairs); 423 at 2 (1984) (scope of public employee privacy is narrow); 212 (constitutional privacy rights of public officials are of a very limited scope). We do not believe that you may withhold the requested telephone numbers based on a right of privacy in this instance.

We point out, however, that section 552.117 may protect some of the telephone numbers from disclosure. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the home telephone number of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Therefore, depending on the circumstances, you may withhold any home telephone numbers of district employees who have elected that this information be kept confidential. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

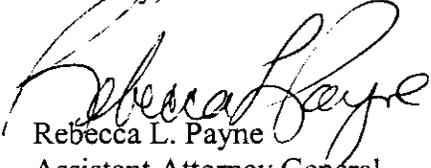
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Rebecca L. Payne
Assistant Attorney General
Chief, Open Records Division

RLP/JDB/ljp

Ref: ID# 134275

Encl. Submitted documents

cc: Mr. Steven Wilmeth
205 Hunter's Creek Drive
Longview, Texas 78501
(w/o enclosures)