



May 23, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 East. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-2025

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 135675 and 136188. We have combined these files and will consider the issues presented in this single ruling assigned ID# 135675.

The Texas Department of Transportation ("TxDOT") received two requests for information related to complaints filed against a TxDOT employee, who is one of the requestors. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You assert that TxDOT has released the responsive information identified at Exhibit "C." We have considered the exception you claim and reviewed the submitted information.

Section 552.101 protects information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy 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. *Industrial Found. of South Texas v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

Section 552.101 also incorporates the constitutional right to privacy. The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. ORD 600 at 4. The

test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* ORD 455 at 5 (citing *Ramie*, 765 F.2d at 492).

We have held, under section 552.101 in conjunction with common law and constitutional privacy, information may be withheld from public disclosure in special circumstances. *See* Open Records Decision No. 169 (1977). An imminent threat of physical danger, as opposed to a generalized and speculative fear of harassment or retribution, is one such "special circumstance." *Id.* at 6. A determination of "special circumstances" can only be made on a case-by-case basis, with the initial determination made by the governing body. *Id.* at 7.

You indicate that the individuals whose identities are at issue have expressed fear of retaliation should the substance of their statements to TxDOT and their identities be revealed. Likewise, TxDOT has expressed concern for the safety and well-being of its employees. In rebuttal to TxDOT's argument, the requestor has submitted a report prepared by a psychologist which the requestor asserts indicates that he is not a violent person. We have reviewed the requested information and the psychological evaluation, and considered TxDOT's stated concerns for the safety of its employees. We believe that there would be an imminent threat of physical danger if the requested information was publicly released. Accordingly, under section 552.101 in conjunction with common law and constitutional privacy, TxDOT must withhold the requested information.

However, the requestors have a special right of access to information held by a governmental body that relates to themselves. Gov't Code § 552.023. A governmental body may not withhold information about an individual solely on the grounds that the individual's privacy interests are at stake. *Id.* In this case, TxDOT must release those responsive statements to the requestor that the requestor made himself. That is, each requestor is entitled to his own statements in the possession of TxDOT, if those statements are responsive to his request.

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,



Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/CHS/ljp

Ref: ID# 135675

Encl. Submitted documents