



October 4, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78752

OR2001-4470

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152756.

The Texas Department of Public Safety (the "department") received a request for:

1. a complete copy of the personnel file of Trooper Marvin Richardson, Badge No. 9933, including but not limited to all C-1's disciplinary actions, test scores and performance evaluations;
2. copies of the "accident investigation" and "custody of property" sections of the TLE General Manual; and
3. copies of the "accident investigation" and "custody of property" sections of the Highway Patrol Manual.

You state that you will release the information to the requestor, with the exception of certain information in the personnel file of Trooper Marvin Richardson. You claim that the submitted information is excepted from section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. The doctrine of 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 the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is

highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision No. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). Therefore, we agree that most of the highlighted information in the submitted documents relates to personal financial information that the department must withhold under section 552.101 in conjunction with common law privacy. We have marked the information that is not private and must be released.

Next, we note that the submitted documents also contain information that is excepted from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) applies to a peace officer as defined under article 2.12 of the Code of Criminal Procedure. Section 552.117(2) excepts from public disclosure information that reveals the peace officers' home addresses, home telephone numbers, social security numbers, and family member information regardless of whether the officers made an election under section 552.024. We have marked the information the department must withhold under section 552.117(2).

In summary, you must withhold most of the personal financial information you have highlighted in the submitted documents. We have marked the information that is not private and must be released. The department must withhold information we have marked under section 552.117(2) of the Government Code.

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 Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/sdk

Ref: ID# 152756

Enc: Marked documents

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(w/o enclosures)