



March 12, 2002

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2002-1182

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159704.

The Texas Department of Criminal Justice (the "department") received a written request for EEO Investigation #01001580, which was conducted by the department's Equal Employment Opportunity Department. You contend that portions of the requested report are excepted from required public disclosure pursuant to sections 552.101 and 552.117(3) of the Government Code.

We note at the outset that the documents you submitted to our office as being responsive to the request are specifically made public under section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). The requested investigation report is expressly made public under section 552.022(a)(1) and may be withheld only to the extent it is made confidential under other law or is excepted from public disclosure under section 552.108 of the Government Code. Because you contend that the information you seek to withhold from the investigation report is made confidential by law, we will consider your section 552.101 and section 552.117(3) claims.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within 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). 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* it is of no legitimate concern to the public. *Id.* at 683-85.

In this instance, however, because you seek to protect the privacy interests of a department employee, the more appropriate exception to raise here is section 552.102 of the Government Code. Section 552.102(a) of the Government Code is specifically designed to protect public employees’ personal privacy. The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ *ref’d n.r.e.*). The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982) *see also* Attorney General Opinion JM-36 (1983).

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress; Open Records Decision No. 343 (1982).

On the other hand, information that pertains solely to an employee’s actions as a public servant generally cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Employee privacy is less broad under common-law privacy because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981); 169 (1977).

Upon review of the information you have highlighted, we conclude that the some of that information is both highly intimate or embarrassing and of no legitimate public interest. The department must withhold the information we have marked pursuant to section 552.102 in conjunction with common-law privacy.

The investigation report also contains department employees' social security numbers, home addresses, and information that reveals whether the employees have family members. Section 552.117(3) of the Government Code requires the department to withhold "information that relates to the home address, home telephone number, or social security number, or that reveals whether" a department employee "has family members." Accordingly, the department must withhold these types of information pursuant to section 552.117(3). We have marked in brackets a portion of the information that the department must withhold under section 552.117(3). Because you do not contend that any other information contained in the report is excepted from public disclosure, the remaining information must be released, except as discussed above.

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).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

  
Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/RWP/sdk

Ref: ID# 159491

Enc: Submitted documents

c: Mr. Douglass L. Anderson  
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(w/o enclosures)