



August 26, 2002

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2002-4741

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167627.

The Comptroller of Public Accounts (the “comptroller”) received a request for copies of photographs of a specified comptroller employee. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted photographs.

You claim that the photographs are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup> Information is protected from disclosure under the common-law right to privacy if it meets the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See id.* at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace,

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common-law right to privacy.

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. We note that information may also be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy upon a showing of certain “special circumstances.”<sup>2</sup> *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

After carefully reviewing your arguments and the photographs at issue, we find that you have not adequately demonstrated special circumstances for withholding the photographs from disclosure. Furthermore, we find that the release of the photographs would not otherwise implicate the common-law right to privacy of the individual depicted in the photographs. Accordingly, we conclude that the comptroller may not withhold these photographs from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See generally* Open Records Decision No. 169 (1977).

You also claim that the photographs at issue are protected from disclosure pursuant to section 30(a) of article I of the Texas Constitution. *See* Tex. Const. art. I, § 30(a). You state that this provision recognizes a crime victim’s “right to be treated with fairness and with respect for the victim’s dignity and privacy.” However, we note that in order for information to fall within the scope of section 552.101 of the Government Code, a statute, or constitution in this case, must explicitly require confidentiality for information. A confidentiality requirement will not be inferred from statutory or constitutional structure. *See, e.g.,* Open Records Decision No. 465 at 4-5 (1987). After reviewing your arguments and the photographs at issue, we do not agree that this provision of the Texas Constitution makes the photographs expressly confidential. Accordingly, we conclude that the comptroller may not withhold the photographs from disclosure pursuant to section 30(a) of article I of the Texas Constitution.

Finally, you claim that these photographs are excepted from disclosure pursuant to section 552.101 in conjunction with the constitutional right to privacy. Section 552.101 also encompasses information protected from disclosure under the constitutional right to privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters

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<sup>2</sup> Although the comptroller claims that the submitted photographs are excepted from disclosure pursuant to section 552.108 of the Government Code because of “special circumstances,” we note that the applicable exception to disclosure for claiming that information is protected from disclosure because of “special circumstances” is section 552.101 of the Government Code. Accordingly, we address the comptroller’s claim that the photographs at issue are protected from disclosure because of “special circumstances” under section 552.101 of the Government Code.

related to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *See id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After carefully reviewing your arguments and the photographs at issue, we do not agree that the release of these photographs would implicate the constitutional right to privacy of the employee depicted in the photographs. Accordingly, we conclude that the comptroller may not withhold these photographs from disclosure pursuant to section 552.101 of the Government Code in conjunction with the constitutional right to privacy.

In summary, the comptroller must release the submitted photographs to the requestor.

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 167627

Enc. Submitted documents

cc: Mr. Mike Woods  
KEYE-TV 42  
10700 Metric Boulevard  
Austin, Texas 78774  
(w/o enclosures)