



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 13, 2003

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-0967

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176497.

The Harris County Constable Precinct 4 (the "constable") received a request for fifteen categories of information pertaining to a particular officer. You state that you do not have information responsive to some of the requested categories. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

We first address your argument under section 552.103 of the Government Code. Section 552.103(a) provides as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) applies. The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 at 3 (1990). Further, section 552.103 only applies where the litigation involves or is expected to involve the governmental body which is claiming the exception. *See* Open Records Decision No. 392 (1983)(finding predecessor to section 552.103 only applicable to governmental body who has the litigation interest). You claim that the submitted materials are related to a pending criminal prosecution and should, therefore, be excepted from disclosure under section 552.103. However, the constable is not a party to that litigation. Consequently, the information is not excepted by section 552.103 in this instance. *See id.*

However, we note that portions of the submitted documents are confidential under section 552.117(2) of the Government Code. The constable must withhold those portions of the records that reveal any licensed peace officer's home address, home telephone number, social security number, and family member information. The constable must also withhold any officer's *former* home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). You must withhold the information we have marked under section 552.117(2).²

Additionally, the submitted documents contain information that is excepted from required public disclosure by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license information that we have marked under 552.130. We note that you have marked as confidential information related to a driver's license issued by another state. Section 552.130 only makes confidential driver's licenses issued by an agency of the State of Texas. Although you also raise section 552.101 as an exception to disclosure of driver's license information, you do not point to a specific confidentiality provision, nor are we aware of any, under which out-of-state driver's license information may be withheld.

² Based on this finding, we need not reach your arguments under sections 552.102 and 552.1175 of the Government Code.

Finally, we have also marked personal financial information that is confidential under section 552.101 in conjunction with common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has concluded that financial information concerning an individual is in some instances protected by a common law right to privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3 (1983). You must withhold the personal financial information that we have marked.

In summary, you must withhold the Texas driver's license information we have marked under section 552.130. You must withhold the peace officers' personal information we have marked under section 552.117(2). You must also withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy. You must release the remainder of the information 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 176497

Enc: Submitted documents

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(w/o enclosures)