



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 23, 2003

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2003-2727

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179844.

The Texas Alcoholic Beverage Commission (the "commission") received a request for "any and all information" regarding a named individual. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.024, 552.101, 552.117, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

You assert that Attachment G is excepted from disclosure based on section 552.101 of the Government Code. 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 the common-law right to privacy. For information to be protected by common-law privacy it must meet 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 stated that information is excepted from disclosure 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. 540 S.W.2d at 685.

¹Section 552.136, which you cite in your February 19, 2003 letter, is identical to section 552.137.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The submitted information contains an adequate summary of the investigation into alleged sexual harassment. Therefore, you must withhold the documents in the investigation file except for the summary which must be disclosed pursuant to *Ellen*, 840 S.W.2d at 525. However, the identities of the victims and witnesses to the alleged sexual harassment are protected by the common-law privacy doctrine and must be withheld. *Id.* Contrarily, the public interest in the identity of the alleged harasser outweighs any privacy interest the alleged harasser may have in that information; therefore, the commission may not withhold this information under section 552.101.

We note that Attachment E contains a Form I-9 that is confidential under section 552.101.² Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted Form I-9 in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the commission must withhold the submitted Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

You next argue that portions of Attachments B and E are excepted from disclosure under section 552.117. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold

²Section 552.101 also protects information made confidential by statute.

information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the commission must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The commission may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. You state and provide evidence that the individual at issue elected to keep her information confidential in accordance with section 552.024 prior to the commission's receipt of the request for information. Accordingly, we agree that the information you have highlighted under section 552.117(1) in Attachments B and E is excepted from disclosure under this section. We have also marked additional information that is excepted under section 552.117(1).

You assert that the remaining submitted information includes information excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, you must withhold the highlighted Texas driver's license numbers and motor vehicle information pursuant to section 552.130. We note that the submitted information also includes motor vehicle information of another state. Section 552.130 by its terms applies only to motor vehicle information issued by an agency of this state. *See* Gov't Code § 552.130. Therefore, the Tennessee driver's license number is not excepted from disclosure under section 552.130.

You argue that the Tennessee driver's license number is excepted from disclosure under section 552.101 in conjunction with section 2721 of title 18 of the United States Code.³ This section provides in relevant part as follows:

(a) In general.--A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

18 U.S.C. § 2721(a)(1). You do not inform this office, nor does the information on its face reflect, that the information at issue is personal information obtained in connection with a motor vehicle record by a state department of motor vehicles as contemplated by the federal

³Section 552.101 also encompasses information protected by statute.

statute. Therefore, we find that this provision does not apply to the commission's records, and the Tennessee driver's license number may not be withheld on this basis.

Finally, you argue that an e-mail address in Attachment E is excepted under section 552.137. Section 552.137 requires the commission to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the members of the public have affirmatively consented to their release. As there is no indication that a member of the public has consented to release of the e-mail addresses in question, the commission must withhold from disclosure the e-mail address of the member of the public in the submitted information, which you have highlighted, pursuant to section 552.137 of the Government Code.

In summary, the commission must withhold the information we have marked in Attachment G under section 552.101 and common-law privacy. A Form I-9 in Attachment E must be withheld under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. You must withhold the information you have highlighted in Attachment E under section 552.117(1), and you must also withhold the additional information we have marked under this section. A Texas driver's license number in Attachment B, which we have marked, must be withheld under section 552.130. Finally, an e-mail address in Attachment E is excepted under section 552.137. The remaining information must be released 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 Dep't of Pub. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 179844

Enc: Submitted documents

c: Mr. Shelton Green
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(w/o enclosures)