



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 18, 2003

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-4995

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184545.

The Travis County Sheriff's Department (the "sheriff") received a request for "any and all allegations made against" a named individual related to a hearing on an appeal. You state that you will withhold some of the responsive information under section 552.117 of the Government Code in accordance with Open Records Decision No. 670 (2001). *See* Open Records Decision No. 673 (2001) (requirements of previous determination). You further state that most of the requested information will be released to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Information is protected from disclosure under the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* 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. Additionally, this office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. *See* Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement

benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989).

The submitted documents contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. We have marked the information that the sheriff must withhold under section 552.101 in conjunction with common-law privacy.

You claim that section 552.117 of the Government Code is applicable to some of the submitted information. Section 552.117(a)(1) 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. Although the employee at issue has made a timely election under section 552.024, the information that you seek to withhold is not the type of information that is excepted from disclosure under section 552.117. Thus, no portion of the remaining submitted information may be withheld under section 552.117(a)(1).

You next claim that the submitted documents contain information that is excepted from public disclosure under section 552.1175 of the Government Code. Section 552.1175 states in pertinent part:

(a) This section applies only to:

...

(2) county jailers as defined by Section 1701.001, Occupations Code;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

If the information you have marked pertains to an individual who is a county jailer as defined by section 1701.001 of the Occupations Code, and if the county jailer elected not to allow access to this information in accordance with the procedures under section 552.1175 of the Government Code, the sheriff must withhold this information from required public disclosure pursuant to section 552.1175. If not, the information must be released.

Finally, you assert that the submitted information also contains an e-mail address obtained from a member of the public. Section 552.137 of the Government Code makes certain e-mail addresses, and provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that the member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. The sheriff must, therefore, withhold the marked e-mail address of a member of the public under section 552.137.

In summary, some of the responsive information will be withheld in accordance with Open Records Decision No. 670 (2001). We have marked the information that the sheriff must withhold under section 552.101 in conjunction with common-law privacy. Provided that the information you have marked pertains to an individual who is a county jailer as defined by section 1701.001 of the Occupations Code, and the county jailer elected not to allow access to this information in accordance with the procedures under section 552.1175 of the Government Code, the sheriff must withhold this information from required public disclosure pursuant to section 552.1175. If not, the information must be released. The sheriff must withhold the marked e-mail address under section 552.137. The remaining submitted 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 184545

Enc. Submitted documents

c: Mr. Bobby R. Taylor
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(w/o enclosures)