



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 30, 2003

Ms. Susan C. Rocha  
Denton, Navarro, Rocha & Bernal, P.C.  
1700 Tower Life Building  
310 South St. Mary's Street  
San Antonio, Texas 78205-3111

OR2003-5264

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185104.

The City of Castroville (the "city"), which you represent, received a request for information relating to current and future hangar lessees and the new proposed airport terminal. You advise that the city has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public 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. Common-law privacy under section 552.101 protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (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). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency

medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You assert that the home addresses and telephone numbers of individuals on a waiting list for future hangars are private under section 552.101. It is well-established that an individual's home address and telephone number are generally not confidential under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's home address and telephone number is not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Furthermore, with respect to individuals with unlisted telephone numbers, we note that a mere expectation of privacy on the part of the individual who provides information to a governmental body does not permit that information to be withheld under section 552.101. *See* Open Records Decision Nos. 479 at 1 (1987) (information not confidential simply because party that submitted information anticipated or requested confidentiality in doing so), 180 at 2 (1977) (information not excepted from disclosure solely because individual furnished it with expectation that access to it would be restricted), 169 at 6 (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution). Therefore, we find that the home addresses and telephone numbers of the individuals on the waiting list do not constitute intimate or embarrassing information that is of no legitimate public interest. Accordingly, we conclude that the city may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy, and it must be released.<sup>1</sup>

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.

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<sup>1</sup> We note that this office also consulted with the United States Transportation Security Administration ("TSA"), and counsel for TSA is of the opinion that the information at issue does not contain sensitive security information as it is defined under section 1520.7 of title 49 of the Code of Federal Regulations. *See* 49 U.S.C. § 40119(b)(1) (Under Secretary of TSA shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities); 49 C.F.R. § 1520.3(a) (notwithstanding Freedom of Information Act or other laws, records that meet definition in section 1520.7 are not available for public inspection or copying, nor is information contained in those records released to public); *id.* § 1520.7(h) (defining sensitive security information as any information that TSA has determined may reveal systemic vulnerability of aviation system, or vulnerability of aviation facilities, to attack).

*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).

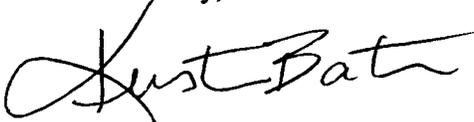
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 185104

Enc. Submitted documents

c: Mrs. Darla Masters  
906 Hwy 90 West  
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(w/o enclosures)