



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

September 11, 2003

Mr. John Feldt  
Assistant District Attorney  
Denton County Criminal District Attorney's Office  
P.O. Box 2850  
Denton, Texas 76202

OR2003-6387

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187511.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for information relating to training meetings conducted by the Denton County Medical Examiner's Office during a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

As section 552.108 of the Government Code is the most inclusive exception you raise, we address this exception first. Section 552.108(a)(1) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Gov't Code* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). As a general rule, section 552.108(a)(1) is

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<sup>1</sup>As the district attorney also initially raised sections 552.1175, 552.122, 552.130, 552.136, and 552.137 of the Government Code, but has submitted no arguments in support of these exceptions, we do not address sections 552.1175, 552.122, 552.130, 552.136, or 552.137. *See Gov't Code* § 552.301(e)(1)(A).

applicable to information that relates to a pending criminal investigation or prosecution. *See* Open Records Decision No. 628 at 2 (1994).

You inform us that the submitted documents reveal law enforcement information and strategies that, if released, might compromise criminal investigation and public safety. You also inform us that these documents contain "personal identifiers" of peace officers, the release of which would interfere with the detection and investigation of crime by threatening the privacy and potentially jeopardizing the safety and welfare of the officers and their families. Having considered your arguments, we conclude that you have not demonstrated that section 552.108(a)(1) of the Government Code is applicable to any of the submitted information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision Nos. 562 at 10 (1990) (statutory predecessor to Gov't Code § 552.108 not applicable to general personnel information relating to law enforcement officers), 252 at 2 (1980) (discussing law enforcement interests delineated in *Houston Chronicle*). Therefore, you may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

You also seek to withhold the submitted information under section 552.108(b)(1). Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov't Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to

indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that relies on section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989); *see also* Open Records Decision Nos. 434 at 2 (1986) (circumstances of each case must be examined to determine whether release of particular information would interfere with law enforcement or crime prevention), 409 at 2 (1984) (whether disclosure of particular records will interfere with law enforcement or crime prevention must be decided on case-by-case basis). You state that the submitted information contains internal records and notations of the Denton County Medical Examiner's Office. You assert that

[t]o release the subjects of law enforcement training seminars and the contents of the materials used for that training could set a dangerous precedent whereby any member of the public, including criminals and their attorneys, could obtain law enforcement training manuals and materials which could be used to put law enforcement agencies at a disadvantage in crime detection and prevention. Public disclosure of the techniques and training used to combat crime might give non-law abiding persons ideas for ways to avoid detection in the commission of crimes which would interfere with the detection and investigation of crime and interfere with law enforcement.

You also seek to withhold "personal identifiers" of peace officers under section 552.108(b)(1). Having considered your arguments, we conclude that you have not demonstrated that any of the submitted information is excepted from disclosure under section 552.108(b)(1). *See also City of Fort Worth v. Cornyn*, 86 S.W.3d at 329 (Gov't Code § 552.108(b)(1) not applicable to background and reference information obtained from third parties to aid police department in hiring decisions); Open Records Decision No. 434 at 3 (1986) (unless records show on their face that disclosure would interfere with law enforcement or prosecution, governmental body claiming exception under statutory predecessor to Gov't Code § 552.108 must identify particular records, or parts thereof, that will do so and provide particular explanation applicable to those records).

You also seek to withhold some of the submitted information under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the social security number of a peace officer from public disclosure, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You inform us that the submitted documents contain the social security numbers of peace officers. We agree that the district attorney must withhold the social security number of a peace officer under section 552.117(a)(2). *See also* Open Records Decision No. 670 at 5-6 (2001) (all governmental

bodies encompassed by Gov't Code ch. 552 may withhold social security numbers of peace officers without necessity of requesting decision under Gov't Code § 552.301 as to whether Gov't Code § 552.117(a)(2) applies).

As you do not indicate that all of the submitted social security numbers are those of peace officers, we also address section 552.117(a)(1). Section 552.117(a)(1) excepts from public disclosure the social security number of a current or former civilian official or employee of a governmental body who timely and specifically requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district attorney must withhold the social security number of a current or former civilian official or employee of Denton County who requested confidentiality for his or her social security number under section 552.024 prior to the date on which the district attorney received this request for information. The district attorney may not withhold a social security number under section 552.117(a)(1) on behalf of a current or former civilian official or employee of Denton County who did not make a timely election under section 552.024 to keep that information confidential. We also note that the requestor has a special right of access to her own social security number under section 552.023 of the Government Code.<sup>2</sup> Therefore, the district attorney may not withhold the requestor's social security number under section 552.117(a)(1). Furthermore, the district attorney has no obligations under sections 552.024 and 552.117(a)(1) with regard to the social security number of a current or former civilian official or employee of a governmental body other than Denton County. *See* Open Records Decision No. 674 at 4 (2001) (governmental body is normally obliged under section 552.117 to protect only information pertaining to employees and officials of that governmental body).

A social security number may also be excepted from disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990.<sup>3</sup> *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of

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<sup>2</sup>*See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning herself).

<sup>3</sup>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." This exception encompasses information that another statute makes confidential.

no law, enacted on or after October 1, 1990 that authorizes the district attorney to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We also note that as the requestor has a special right of access to her own social security number, the district attorney may not withhold that information under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I). See Gov't Code § 552.023(a). Otherwise, we caution the district attorney that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number to the public, the district attorney should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Next, we address the district attorney's privacy claims under sections 552.101 and 552.102. Section 552.101 also encompasses constitutional and common-law rights to privacy. Constitutional privacy under section 552.101 protects two kinds of interests. See Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); see also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Open Records Decision No. 455 at 3-7 (1987); see also *Fadjo v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See Open Records Decision No. 455 at 6-7 (1987); see also *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information in question. See Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

The common-law right to privacy 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 540 S.W.2d 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 No. 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).

Section 552.102 of the Government Code excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). This exception is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The test of privacy under section 552.102(a) is the same as the test of common-law privacy under section 552.101 of the Government Code. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor to Gov't Code § 552.102).

The district attorney contends that "personal identifiers" of peace officers contained in Exhibit C are private under sections 552.101 and 552.102. This office has often stated, however, that the public has a legitimate interest in information that relates to public employees, particularly those who are involved in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 542 at 5 (1990) (information in public employee's resume not protected by constitutional or common-law privacy under statutory predecessors to Gov't Code §§ 552.101 and 552.102), 470 at 4 (1987) (public employee's job performance does not generally constitute employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees, particularly those involved in law enforcement), 423 at 2 (1984) (statutory predecessor to Gov't Code § 552.102 applicable when information would reveal intimate details of highly personal nature), 400 at 5 (1983) (statutory predecessor to Gov't Code § 552.102 protects information only if release would lead to clearly unwarranted invasion of privacy), 169 at 6-7 (1977) (withholding of information that would identify public employees required demonstration of truly exceptional circumstances, such as imminent threat of physical danger). We also have concluded that a social security number does not constitute private information under section 552.101. *See* Open Records Decision No. 622 at 2 (1994) (citing previous decisions). Therefore, having considered your arguments, we conclude that none of the submitted information is protected by constitutional or common-law privacy under sections 552.101 or 552.102.

In summary, the district attorney must withhold the social security number of a peace officer under section 552.117(a)(2) of the Government Code. The district attorney also must withhold the social security number of a current or former civilian official or employee of Denton County who timely and specifically requested confidentiality for his or her social security number under section 552.024. A social security number also may be excepted from public disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of

title 42 of the United States Code. The requestor has a special right of access to her own social security number, and the district attorney may not withhold that information under section 552.117 or under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of the federal law. The rest of the submitted information is not excepted from disclosure and must be released.

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).

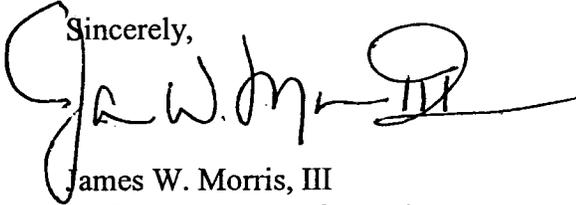
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a distinct "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 187511

Enc: Submitted documents

c: Ms. Sylvia P. Benavides  
P.O. Box 50234  
Denton, Texas 76206  
(w/o enclosures)