



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2003

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2003-7345

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189563.

The Waco Police Department (the "department") received a request for various records on a named individual. You state that some information will be made available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.115, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal

financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Having reviewed the submitted information, we find that most of the information you seek to withhold is protected by common-law privacy, and thus must be withheld pursuant to section 552.101 on this basis. We have marked additional information that must be withheld under section 552.101 in conjunction with common-law privacy. We have also marked a small portion of information you have marked, but which may not be withheld under common-law privacy. This information must be released.

Section 552.101 also excepts from disclosure information made confidential by other statutes. Section 1703.306 of the Occupations Code provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination to another person other than: (1) the examinee or any other person specifically designated in writing by the examinee.” Occ. Code § 1703.306(a)(1). Thus, in accordance with sections 552.101 and 1703.306, the department must withhold the polygraph information that we have marked.

You also assert that the submitted information contains a birth record which is excepted from disclosure pursuant to section 552.115 of the Government Code. We note that birth or death records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official are excepted from disclosure under section 552.115. However, because section 552.115 applies only to records held by the bureau of vital statistics or a local registration official, any birth records held by the department are not excepted from disclosure under section 552.115 of the Government Code. This record, therefore, must be released.

You state that certain information you have marked is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024.<sup>1</sup> You indicate that the individual at issue was a licensed peace officer when he completed the enclosed application forms. However, you do not inform us that the individual is currently a licensed peace officer. Therefore, you must withhold the information we have marked pursuant to section 552.117(a)(2) if the individual at issue is a licensed peace officer. You may not withhold this information if the individual at issue is not a licensed peace officer.

---

<sup>1</sup>“Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

Even if section 552.117 does not apply, the social security number in the submitted information may be confidential under federal law. A social security number may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994)*. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the submitted records subject to release is confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 and the referenced federal provision. However, we caution the department that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. Accordingly, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130.

In summary, we conclude that: (1) the department must withhold most the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy; we have marked a small portion of information which you have marked, but which may not be withheld under common-law privacy and therefore must be released, (2) in accordance with sections 552.101 and 1703.306, the department must withhold the polygraph information that we have marked, (3) if the individual at issue is currently a licensed peace officer, then the department must withhold the information we have marked in accordance with section 552.117; if not, then the department may not withhold the information under this provision, (4) the submitted social security number may be confidential under federal law, and (5) the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130. The remaining information 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 189563

Enc. Submitted documents

c: Mr. James Kreimeyer  
Criminal Investigator  
James Kreimeyer  
P. O. Box 727  
Belton, Texas 76513  
(w/o enclosures)