



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2003

Mr. Robert E. Etlinger  
Guadalupe County Attorney  
101 East Court Street, Suite 104  
Seguin, Texas 78155-5779

OR2003-7386

Dear Mr. Etlinger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189583.

Guadalupe County (the "county") received four requests for the "date of hire and salary" and "[r]esumes, job applications and any other related documents submitted to [the county]" by one named employee and for the "dates of hire, job titles, salaries, and dates of resignation" and "[r]esumes, job applications and any other related documents submitted to [the county]" of three former county employees. You state that some information has been provided to the requestor. You claim that other portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See Gov't Code § 552.304 (providing for submission of public comments).*

We begin by addressing several procedural issues. The requestor's attorney asserts that the county was not timely in requesting this ruling. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply "not later than the 10th business day *after the date of receiving the written request.*" *See Gov't Code § 552.301(a), (b) (emphasis added).* The county states that these four requests were received on July 28, 2003. The 10th business day *following that date* was August 11, 2003. The county submitted its request for a ruling on August 11, 2003. Accordingly, we conclude that the county was timely in requesting this ruling.

We next address the requestor's assertion that the county has failed to timely request a ruling with regard to two additional requests for information. We note, however, that the county has not provided this office with a copy of the two requests at issue, nor has the county requested a decision from this office with respect to such requests. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under this section, a governmental body that receives a written request for information that it wishes to withhold from public disclosure must ask for a decision from the attorney general and state the exceptions that apply not later than the 10th business day after the date of receiving the written request. Gov't Code § 552.301(a), (b). As the county has not sought a decision with respect to the two requests at issue, we have no basis for ruling on information that would be responsive to those two requests, and this ruling will not address any such information.

As for the portion of the valid requests that seeks "any other documents submitted to [the county]," you inform us that the county has sent the requestor a letter seeking the clarification or narrowing of this aspect of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You indicate that, as of the date you requested this ruling, the county had not received a response to its letter. Because the county is awaiting a response, its deadline for seeking a ruling from this office regarding that information has been tolled, and this ruling does not address any information that is potentially responsive to the portions of the requests seeking "any other documents submitted to [the county]." *See* Open Records Decision No. 663 (1999) (determining that during interval in which governmental body and requestor communicate in good faith to narrow or clarify request, Public Information Act permits a tolling of deadlines imposed by section 552.301).

We note, however, that a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full business days from the date the requestor responds to the clarification request. Instead, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. Thus, the county's deadlines for requesting a ruling from this office regarding this information will resume upon the county's receipt of the requestor's response.

We turn now to the remaining information sought by these four requests, which you have submitted as Exhibits 5-8. You argue that some of this information is excepted from disclosure under section 552.101 in conjunction with common law privacy and under section 552.102. Section 552.102 excepts from 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident*

*Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy. Accordingly, we will consider your section 552.101 and section 552.102 claims together.

Common law privacy protects information that (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 Found.*, 540 S.W.2d at 685. 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. This office has also 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).

On the other hand, this office has found that the following types of information are not excepted from required public disclosure under common law privacy: information regarding an individual's profession or business, organizational memberships, or religious affiliation, Open Records Decision No. 674 (2001); job qualifications, including college transcripts, Open Records Decision No. 470 (1987); age, salary, title, and date of employment, Open Records Decision Nos. 455 (1987), 373 (1983); licenses, certificates, and professional awards, Open Records Decision Nos. 444 (1986), 342 (1982); educational background and training, Open Records Decision Nos. 455 (1987), 444 (1986); past work history, Open Records Decision No. 455 (1987), 444 (1986); names, addresses, and telephone numbers of job references, Open Records Decision No. 455 (1987); performance evaluations, Open Records Decision Nos. 470 (1987), 400 (1983); and reasons for a public employee's demotion, dismissal, or resignation, Open Records Decision Nos. 444 (1986), 329 (1982), 278 (1981). Having reviewed the information submitted as Exhibits 5-8, we find that none of it is protected by common law privacy, and none of it may be withheld pursuant to section 552.101 on this basis. *See also* Open Records Decision No. 169 at 6 (1977) (withholding of information that would identify public employees required demonstration of truly exceptional circumstances, such as imminent threat of physical danger).

You also contend that portions of Exhibits 5-8 are protected under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from public

disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024. Section 552.117(a)(2) excepts the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or 552.1175 of the Government Code.<sup>1</sup>

In this instance, you inform us that the current county employee whose information was requested “is a Certified Texas Peace Officer.” Therefore, pursuant to section 552.117(a)(2), the county must withhold the above-listed information of this individual. Pursuant to section 552.117(a)(1), the county must withhold the same information for any of the three former employees who elected, prior to the receipt of this request, to keep such information confidential. We have marked the information that must be withheld if section 552.117 applies.

You also assert that the county must withhold a portion of the requested information pursuant to section 552.130 of the Government Code. This section excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Consequently, pursuant to section 552.130, the county must withhold the Texas-issued driver’s license information that we have marked.

In summary, we have marked the information in Exhibits 5-8 that must be withheld if section 552.117 applies. The county must also withhold the Texas-issue driver’s license information that we have marked in these exhibits. The remainder of Exhibits 5-8 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).

---

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

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# 189583

Enc. Submitted documents

c: Mr. Bill O'Connell  
Seguin Gazette-Enterprise  
P.O. Box 1200  
Seguin, Texas 78155  
(w/o enclosures)