



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2004

Mr. Randall J. Soverinsky  
Legal Counsel  
Charter School Administration Services  
20755 Greenfield Road, Suite 300  
Southfield, Michigan 48075

OR2004-2000

Dear Mr. Soverinsky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200408.

The Academy of Dallas (the "Academy") received a request for contact information, including home and work addresses and phone numbers, of board president Jessica Sears. You claim that the requested information is excepted from disclosure under sections 552.024, 552.101, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family-member information of a governmental body's current or former officials or employees who request the information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the Academy may only withhold information under section 552.117 on behalf of current or former officials or employees if they made a request for confidentiality under section 552.024 before the request for the information was made. The Academy may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. Here, Ms. Sears did not make a request for confidentiality until after the request for this information was made; therefore, section 552.117 does not except the requested information from disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines of common law and constitutional privacy.

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes that 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.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy-the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: certain kinds of medical information or information indicating disabilities or specific illnesses. *See* Open Records Decision No. 470 (1987) (illness from severe emotional and job-related stress), No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992), No. 545 (1990); information concerning the intimate relations between individuals and their family members. *See* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

The requested information regarding Ms. Sears does not fall within the scope of either common law privacy or constitutional privacy; therefore, it is not protected by section 552.101 of the Government Code.

Because the information at issue is not protected by section 552.117 or 552.101 of the Government Code, the Academy must release it.

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).

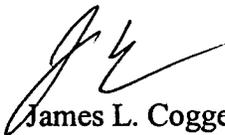
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshell  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 200408

Enc. Submitted documents

c: Ms. Becky Oliver  
KDFW FOX 4 Dallas  
400 North Griffin Street  
Dallas, Texas 75202  
(w/o enclosures)