



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2005

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2005-00717

Dear Ms. Lytle:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 217585.

The El Paso County Auditor (the "county") received a request for the names, addresses, and telephone numbers of all retired county employees. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.1175 of the Government Code.¹ You also believe that some of the information is not responsive to this request. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your representation that some of the submitted information relates to spouses of deceased employees. You assert that this information is not responsive to the present request. We agree that this request for "a list of all retired employees" does not appear to encompass the submitted information that relates to deceased employees' spouses. Therefore, this decision does not address the public availability of the spouses' information, and that information need not be released to the requestor.

¹You also claim an exception to disclosure under section 552.024. We note that the function of this section is to permit a current or former official or employee of a governmental body to restrict public access to his or her home address and telephone number, social security number, and family member information. See Gov't Code § 552.024(a).

Next, we address your claims under sections 552.101 and 552.102 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses constitutional and common-law rights of privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). 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 *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. 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).

Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information 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 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has 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 held 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 excepts from 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 privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101

and *Industrial Foundation*. 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).

In this instance, the information at issue consists of the home addresses of retired county employees. This office has determined that an individual's home address generally is not protected from public disclosure by constitutional or common-law privacy. See Open Records Decision Nos. 554 at 3 (1990) (disclosure of individual'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"). Therefore, the county may not withhold any of the submitted information on privacy grounds under sections 552.101 or 552.102.

Next, we address your claims under sections 552.117 and 552.1175. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, 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 some of the submitted information relates to individuals who were employed by the county as licensed peace officers. To the extent that the submitted information relates to an individual who was a licensed peace officer under article 2.12 of the Code of Criminal Procedure when the county received this request for information, the peace officer's home address must be withheld under section 552.117(a)(2). Section 552.117(a)(2) would not be applicable, however, to the home address of an individual who was no longer a peace officer under article 2.12 of the Code of Criminal Procedure when the county received this request for information. See also Open Records Decision No. 670 (2001).

Section 552.1175 is applicable to "county jailers as defined by Section 1701.001, Occupations Code[.]" Gov't Code § 552.1175(a)(1). Section 552.1175 further provides:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). To the extent that the submitted information relates to an individual who was a county jailer, as defined by section 1701.001 of the Occupations Code, when the county received this request for information, the county jailer's home address must be withheld under section 552.1175 if the county jailer elects to restrict access to that information in accordance with section 552.1175(b).

Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the county may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who requested confidentiality for the information under section 552.024 prior to the date of the county's receipt of the request for the information. The county may not withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who did not make a timely request for confidentiality under section 552.024.

You state that some of the submitted information relates to individuals who elected to restrict access to their home addresses prior to the county's receipt of this request for information. To the extent that the submitted information relates to a retired county employee, including a former peace officer or county jailer, who requested confidentiality for his or her home address before the county received this request for information, the county must withhold the home address of any such retired employee under section 552.117(a)(1). We note, however, that because a post office box number is not a "home address" for purposes of section 552.117, the county may not withhold a post office box number under section 552.117(a)(1). *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

In summary: (1) the home address of an individual who was a peace officer when the county received this request for information must be withheld under section 552.117(a)(2); (2) the home address of an individual who was a county jailer when the county received this request for information must be withheld under section 552.1175 if the county jailer elects to restrict access to that information in accordance with section 552.1175(b); and (3) the home address of a retired county employee, including a former peace officer or county jailer, must be

withheld under section 552.117(a)(1) if the retired employee timely requested confidentiality for his or her home address under section 552.024. The county must release the rest of the submitted information.

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).

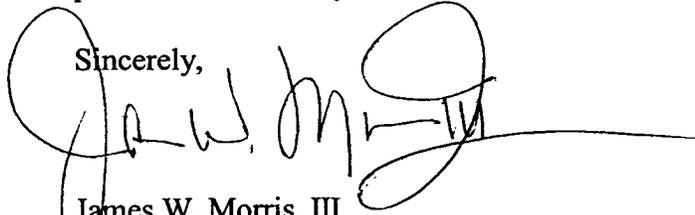
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 'J.W. Morris, III', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 217585

Enc: Submitted documents

c: Mr. Jerry A. Keith
7608 Franklin Loop
El Paso, Texas 79915
(w/o enclosures)