



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2005

Mr. Chris Settle  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2005-07776

Dear Mr. Settle:

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# 230960.

The Dallas Police Department (the "department") received a request for the employment file of a named former department officer. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

You contend that portions of the submitted information must be withheld under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common law right of 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

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<sup>1</sup>We assume that, to the extent any additional responsive information existed on the date the department received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

the public. *Indus. Found. v. Tex. 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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information the department must withhold under section 552.101 in conjunction with common law privacy.

We note that some of the remaining information may be subject to section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.<sup>2</sup> Section 552.117(a)(2) also applies to currently licensed peace officers formerly employed with the department. Accordingly, if the individual to whom the submitted information pertains is a currently licensed peace officer, the department must withhold the information we have marked under section 552.117(a)(2).

Even if the individual at issue is not currently licensed as a peace officer, the marked information may be excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that such 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 department must withhold the marked information under section 552.117(a)(1) if the individual at issue made a request for confidentiality under section 552.024 prior to the date of the department's receipt of the instant request.

Regardless of whether it is excepted from disclosure under section 552.117 of the Government Code, the submitted social security number is excepted from disclosure under section 552.147 of the Government Code<sup>3</sup>, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the

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<sup>2</sup>Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

<sup>3</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

department must withhold the social security number we have marked under section 552.147.<sup>4</sup>

In summary, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common law privacy. If the individual at issue is a currently licensed peace officer, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual at issue is not a currently licensed peace officer, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code if that individual made a timely election to keep such information confidential. The marked social security number must be withheld under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

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<sup>4</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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); *Tex. 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 230960

Enc. Submitted documents

c: Mr. Monty Drake  
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(w/o enclosures)