



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2006-04096

Dear Ms. Joe:

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# 245827.

The Travis County Sheriff's Office (the "sheriff") received two requests for information related to the application and permit of a specified sexually-oriented business. You state that you have released a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted application.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You assert that portions of the submitted information are confidential under the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston regulating sexually-oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that

[T]here is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

N.W. Enterprises, Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D. Tex.1998). The Fifth Circuit Court of Appeals, in upholding the confidentiality determination of the district court, stated that "[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public." *N.W. Enters.*, 352 F.3d at 195. The appellate court also agreed that the entertainers' and managers' home addresses and telephone numbers are confidential. *Id.* Thus, pursuant to that decision, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer's or manager's home address and telephone number, is generally confidential.

You have submitted the requested application for our review. Included with the application are newspaper clippings in which identifying information of the manager of the specified sexually-oriented business is published. The newspaper clippings suggest that the publishing of the manager's identifying information is part of a legal requirement. We sent you a letter seeking additional information concerning the existence of a legal requirement mandating the publication of the manager's identifying information. We also requested an explanation of how such information, once it is published under a legal requirement, should be excepted from disclosure under the court's decision in *N.W. Enterprises*. See Gov't Code § 552.303(c) (if attorney general determines additional information is necessary to render a decision, the attorney general shall give written notice to governmental body). You have submitted a copy of the relevant Travis County Order mandating the publishing of the manager's name. See Order of Travis County Commissioners Court § 50.045. Further, you acknowledge that because of this publication requirement, the identifying information may not be protected from disclosure in accordance with the holding in *N.W. Enterprises*. Since you have not provided any additional arguments explaining the applicability of the *N.W. Enterprises* decision to the information at issue, we conclude that you may not withhold this information under section 552.101 on that basis. See generally Gov't Code § 552.303(e) (failure of governmental body to provide necessary additional information to attorney general results in presumption of public disclosure unless compelling reasons exists to withhold the information).

You assert, however, that the manager's identifying information may be excepted from disclosure under common law privacy. Section 552.101 of the Government Code also encompasses doctrine of common law privacy, which 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. *Indus. Found. v.*

Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). Although you assert that the information at issue is protected by privacy, you have not submitted any arguments explaining how the information at issue constitutes highly intimate or embarrassing information, the release of which would be highly objectionable to a reasonable person. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Accordingly, you have failed to demonstrate that the manager's identifying information is confidential under common law privacy.

However, we note that the application contains Texas motor vehicle information. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, the information you have marked must be withheld pursuant to section 552.130.

Additionally, we note that the application contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the sheriff must withhold the social security numbers contained in the submitted information under section 552.147.¹

We also note that the application contains a bank account number subject to section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The sheriff must, therefore, withhold the marked bank account number under section 552.136.

Finally, you assert that a portion of the application is excepted under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, we agree that the sheriff must withhold the e-mail addresses you have marked under section 552.137.

¹We 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.

In summary, the sheriff must withhold: 1) the Texas motor vehicle information you have marked pursuant to section 552.130 of the Government Code; 2) the social security numbers pursuant to section 552.147 of the Government Code; 3) the bank account number you have marked pursuant to section 552.136 of the Government Code; and 4) the e-mail addresses you have marked pursuant to section 552.137 of the Government Code. The remaining submitted information must be released to the requestors.

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).

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 Office of the Attorney General 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. 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 245827

Enc. Submitted documents

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