ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2006

Ms. Lisa Villarreal
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2006-05588

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 252364.

The Office of the Attorney General (the "OAG") received a request for Harold Cornish's deposition taken by counsel for the Texas Department of Family and Protective Services. The OAG asserts some of the information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted information.

First, the OAG asserts section 552.101 in conjunction with common-law privacy and states it cannot release date of birth until the resolution of a pending lawsuit involving this issue. The State Bar of Texas currently has a lawsuit pending against the Office of the Attorney General over the release of the same type of information in *State Bar of Texas v. Abbott*, Cause No. GV403520, 261st District Court of Travis County, Texas. Accordingly, we are closing our file with regard to the birth date without issuing a decision and will allow the trial court to determine whether the type of information at issue must be released to the public.

The OAG also asserts section 552.101 and common-law privacy for other information it has marked. Section 552.101 excepts "information considered to be confidential by law, either

constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law 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. *Indus. Found. v. Tex. 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* 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. 540 S.W.2d at 683. In addition, personal financial information not relating to a financial transaction between an individual and a governmental body is considered private information because it is highly intimate information that is not of legitimate concern to the public. Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the information the OAG marked, we conclude the OAG must withhold the personal financial information it has marked. The remainder is not private and must be released.

Section 552.117 excepts from public disclosure a peace officer's or former Texas Department of Criminal Justice employee's home address, home telephone number, social security number, and information that reveals whether the peace officer or former employee has family members. Gov't Code § 552.117(a)(2), (3). The protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the OAG is not the employer for the persons at issue. Consequently, subsections 552.117(a)(2) and 552.117(a)(3) are inapplicable.

Section 552.1175 of the Government Code provides, in relevant part:

> (b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure or a former Texas Department of Criminal Justice employee], 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.

Gov't Code § 552.1175(b). If these individuals, whose information you have marked, are currently licensed peace officers, as defined by article 2.12, or former Texas Department of Criminal Justice employees who elected to restrict access to this information in accordance with section 552.1175(b), the OAG must withhold the information it has marked under section 552.1175. Otherwise, the OAG must release the 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).

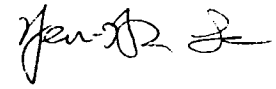
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 252364

Enc: Submitted documents

c: Mr. Timothy Grey
1357 Middleton
Cedar Hill, Texas 75104
(w/o enclosures)