



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2007

Mr. Nathan C. Barrow
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-05748

Dear Mr. Barrow:

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# 278390.

The Fort Worth Police Department (the "department") received a request for a specified report. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses common law privacy. Gov't Code § 552.101. Information is protected from disclosure by the common law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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,

¹Although you did not timely raise section 552.101 of the Government Code, this provision constitutes a compelling reason to withhold information, and we will address your arguments under this exception. See Gov't Code §§ 552.301, .302.

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Information may also be withheld under section 552.101 in conjunction with common law privacy upon a showing of “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

In this instance, you inform us that the release of the highlighted information, which identifies undercover officers, would not only compromise the effectiveness of these individuals as undercover officers, but would likely cause the officers to face imminent threat of physical danger. Based on your representations and our review, we agree that the department must withhold this information under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common law privacy.² The remaining information must be released.

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,

²As our ruling is dispositive, we do not address your remaining argument.

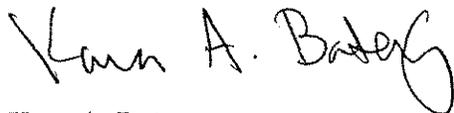
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, stylized "G" at the end.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 278390

Enc. Submitted documents

c: Mr. Ryan Brink
11840 Moorhen Circle
Keller, Texas 76248
(w/o enclosures)