



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2007

Ms. Josie Delaney
Open Records Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2007-16571

Dear Ms. Delaney:

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# 297373.

The Texas Department of Family and Protective Services ("DFPS") received a request for a copy of the identification badges of named employees. You inform us that DFPS does not maintain some of the requested information.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments concerning availability of requested information).

DFPS states that photographs stored for some of the requested information would require it to dedicate a staff person to search through all of the photographs to find the requested information. We note, however, that the administrative inconvenience of providing public records to a requestor in response to an open records request does not constitute sufficient grounds for denying such a request. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Further, a governmental body must make a good faith effort to relate a request to information which it holds. *See*

¹*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. —San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

Open Records Decision No. 561 at 8 (1990). We therefore find that DFPS may not refuse to comply with any portion of this request on the basis that doing so would be burdensome.

Next, we address the requestor's contention that DFPS failed to request a ruling as prescribed by section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Pursuant to section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The requestor submitted a request to your office for some of the same information as the present request. The first request was dated October 28, 2006 and reflects that it was received by DFPS on October 30, 2006. Our records do not show that DFPS requested a decision from this office for the 2006 request for information. Thus, DFPS failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101, 552.130, and 552.136 of the Government Code provide compelling reasons to withhold information. Therefore, we will consider your arguments under these exceptions for information subject to both requests.

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. Section 552.101 encompasses common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate and 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). 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, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has also determined that information may be withheld

from public disclosure based on 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. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* at 6.

In this instance, you express generalized concerns that release of the submitted information will lead to potential harm to the named employees. However, you provide no specific explanation detailing particularized threats or safety concerns. Thus, DFPS has failed to articulate how release of the submitted information would present an imminent credible threat to the safety of the named employees. Further, DFPS acknowledges the submitted information does not constitute highly intimate or embarrassing information. Accordingly, DFPS may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

Next, you claim section 552.130 of the Government Code for the submitted information. Section 552.130 excepts from disclosure Texas motor vehicle record information and information that relates to a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov’t Code § 552.130(a). We conclude that DFPS identification badges are not records excepted under section 552.130 of the Government Code.

Section 552.136 provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. DFPS states that the requested information allows access to various secure governmental buildings. We note, however, that access to a building is not the use protected under section 552.136, which specifies the use as obtaining money, goods, services, another thing of value, or a transfer of funds. Thus, DFPS may not withhold the submitted information section 552.136 of the Government Code. Therefore, the requested 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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, appearing to read "Henisha D. Anderson". The signature is fluid and cursive, with the first name being the most prominent.

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/jb

Ref: ID# 297373

Enc. Submitted documents

c: Mr. Andrew D. Rivera
903 Romeria, #105
Austin, Texas 78757
(w/o enclosures)