



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2007

Ms. Moira Schilke
Assistant District Attorney
Dallas County District Attorney
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2007-16934

Dear Ms. Schilke:

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# 298130.

The Dallas County Attorney's Office (the "county") received a request for the name, ethnicity, salary, title and dates of employment of each current employee of the Dallas County District Attorney's Office whose duties include answering a named switchboard number as well as the names of their supervisors. 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. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments stating whether requested information should be released).

Initially, we note that the county did not submit the supervisor's names as requested. As you have not submitted this information for our review, we assume you have released it to the extent it existed on the date the county received the request. If you have not released this information, you must release this information to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).

We next note that the submitted documents contain information that is not responsive to the request. As noted, the requestor is seeking the name, ethnicity, salary, title, and dates of employment of county employees. Thus, we note that information beyond the requested name, ethnicity, salary, title, and dates of employment is not responsive to the request and need not be released, and may be redacted from documents containing responsive information. The present ruling does not address your claimed exception to disclosure with regard to any submitted information beyond the name, ethnicity, salary, title, and dates of employment that is responsive to the request.

We also note that the submitted information includes documents that are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). The submitted information contains information regarding employees of the county which is expressly public under section 552.022(a)(2). Pursuant to section 552.022, this information is required to be released unless it is expressly confidential under "other law." You contend that the submitted information is confidential under section 552.101 of the Government Code. Because, section 552.101 is "other law" for the purposes of section 552.022, we will address your argument under this section.

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). Information may 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.* The county asserts that the release of information regarding its personnel exposes these individuals to the continued harassment of the requestor. Upon review, we determine that the county has not established that release of the section 552.022(a)(2) information at issue would cause an individual to face imminent threat of physical danger. Further, this office has found that the public has a legitimate interest in information that

relates to public employment and public employees. *See* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, we find that there is a legitimate public interest in this information; therefore, none of the responsive information may be withheld by the county under section 552.101 in conjunction with common law privacy. The responsive information subject to section 552.022(a)(2) 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 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).

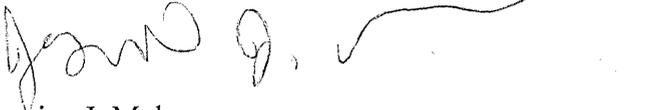
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 'Jessica J. Maloney', with a long, sweeping horizontal line extending to the right.

Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 298130

Enc. Submitted documents

c: Mr. Abdel Tannous
P.O. Box 4231
Dallas, Texas 75208-0231
(w/o enclosures)