



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2008

Mr. James Thompson
City of Copperas Cove
507 South Main
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR2008-06932

Dear Mr. Thompson:

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# 310450.

The City of Copperas Cove (the "city") received a request for records of a specified internal investigation involving a named individual, as well as the named individual's personnel file. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that pursuant to section 552.303 of the Government Code, we notified the city by letter that we needed additional information regarding the instant request. *See* Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). In addition, we telephoned your office and left a message regarding this matter. Because the city did not respond to our letter, the city failed to comply with section 552.303(d). Therefore, the requested information is presumed subject to disclosure and must be released unless a compelling reason exists to

withhold the information. *See id.* § 552.303(d), (e). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure).

Next, we note that you have redacted information in the submitted documents. We note that section 552.147(b) of the Government Code authorizes the city to redact a living person's social security number from public release without the necessity of requesting a decision from this office. However, you have also redacted other types of information. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any of the remaining information without seeking a ruling from this office. *See* Gov't Code § 552.301(2); Open Records Decision 673 (2000). Therefore, the city has failed to comply with section 552.301(e) in regards to the redacted information.

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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); 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).

We are able to discern the nature of the information you appear to have redacted under sections 552.117, 552.130, and 552.136 of the Government Code; thus, being deprived of that information does not inhibit our ability to make a ruling.¹ However, we are not able to discern the nature of the information you have redacted under section 552.101 of the Government Code. Thus, because we are not able to review this redacted information, we have no means of determining whether it is excepted from release pursuant to the Act. We therefore have no choice but to order the release of the information we have marked pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

The law enforcement interests of another governmental body can provide a compelling reason to withhold information. *See* ORD 586. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and

¹In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling.

why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “[t]his case is under investigation by the Coryell County District Attorney’s Office [the ‘district attorney’] and has not been indicted [sic].” However, you have not yet provided us with a representation from the district attorney stating that it wishes to withhold the submitted information under section 552.108(a)(1). Furthermore, you make no arguments that any of the submitted information is the subject to an actual ongoing criminal investigation or prosecution by the city, nor do you provide any arguments explaining how release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Therefore, the city has not established the applicability of section 552.108 or shown a compelling reason to withhold the information.

You raise section 552.101 of the Government Code, which 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 information made confidential by other states, such as section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we find that the I-9 form we have marked is confidential under section 552.101 of the Government Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which makes confidential emergency medical service (“EMS”) records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). We have marked the documents that constitute EMS records pursuant to section 773.091. It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Thus, the city must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except for information subject to section 773.091(g).

Section 552.101 also encompasses the common-law right of privacy, which protects information if it (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). 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. *Id.* at 683. In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. Accordingly, the city must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

However, we find that there is a legitimate public interest in the remaining information. The information at issue relates to the conduct of an emergency medical technician. As this office has frequently stated, information pertaining to the performance of a public employee is generally a matter of legitimate public interest. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees, particularly those involved in law enforcement), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.117 of the Government Code. 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note that the employee at issue timely elected for the confidentiality of his information. Therefore, the city must

withhold the information you have marked, and the information we have marked, under section 552.117(a)(1).

Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information you have marked, and the information we have marked, pursuant to section 552.130 of the Government Code.

We note that some of the remaining information is excepted from disclosure under sections 552.136 and 552.137 of the Government Code.² Section 552.136 provides:

(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.

Id. § 552.136. The insurance policy number we have marked must be withheld under section 552.136 of the Government Code.

Finally, 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 id.* § 552.137(a)-(c). The e-mail address we have marked in the remaining information is not of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail address we have marked in accordance with section 552.137 unless the city receives consent for its release.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) federal law; (2) section 773.091 of the Health and Safety Code, except for the information subject to section 773.091(g); and (3) common-law privacy. The city must also withhold the information you have marked, and the additional information we have marked, under sections 552.117, 552.130, 552.136, and 552.137 of the Government Code. 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 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).

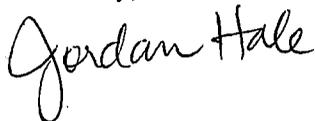
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 310450

Enc. Submitted documents

c: Mr. Jon Schroeder
Killeen Daily Herald
102 Cove Terrace Shopping Center
Copperas Cove, Texas 76522
(w/o enclosures)