



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2008

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2008-07615

Dear Ms. Alexander:

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# 311892.

The Texas Department of Transportation (the "department") received four requests from the same requestor for travel logs and billing information for state-operated aircraft for a specified time period, including the cost associated with each flight, the destination, and the purpose of the trip. You state that some of the requested information has been released to the requestor. 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, a portion of which consists of representative sample information.¹ We have also considered comments submitted by the Texas Department of Public Safety (the "DPS"), the Office of the Governor, and the Office of the Attorney General (the "OAG"). See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts 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 the doctrine of common-law privacy. Common-law privacy protects information that (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). This office has found that 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 department asserts that all of the submitted information must be withheld because the privacy rights of the Governor and the Attorney General include the right to be safe from physical harm. You state that the DPS is responsible for the personal safety of the Governor and the Governor's family. The OAG states that the Attorney General's Protective Detail (the "AGPD"), a section within the OAG's Criminal Investigations Division, provides security and protection for the Attorney General. The department and the OAG explain that the submitted information reveals the number of officers protecting the Governor, the Governor's family, and the Attorney General, and that the DPS and AGPD do not publicly identify the number of officers protecting these individuals on a permanent basis or at any particular time. You state that the release of this information would be valuable for someone who intended to cause the Governor harm, while the OAG makes the same assertion regarding the Attorney General. Based on these representations and our review, we determine that the release of some of the submitted information would place the Governor and Attorney General in imminent threat of physical danger. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy. We find, however, that release of the remaining information would not place the Governor and Attorney General in imminent threat of physical danger. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with the "special circumstances" aspect of common-law privacy, but must instead 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).

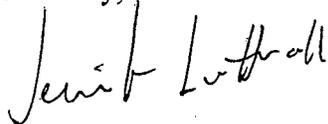
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 311892

Enc. Submitted documents

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