



August 20, 2001

Ms. Ann-Marie P. Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2001-3659

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150961.

Travis County (the "county") received a request for:

1. [A]ll documents, applications and or notes pertaining to the hiring of the Intake Assistant that Petra Moya applied for.
2. In addition, a list of the hiring panel and the person who made the final decision.

You state that you have released the requested information to the requestor with the exception of information that you have redacted. You claim that the redacted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your arguments under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common law right to privacy. Information is private if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and

the public has no legitimate interest in it. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The identity of the individual accused of sexual harassment is not protected under common law privacy and an applicant's qualifications for a job are of public interest, especially when the applicant is selected for employment. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*); Open Records Decision Nos. 455 (1987), 444 (1986). We therefore find that the information you have marked in the submitted documents concerning an allegation of sexual harassment may not be withheld under section 552.101 in conjunction with common law privacy.

Section 552.101 in conjunction with common law privacy also protects some personal financial information. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). Because an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy, the salary information in the submitted documents that relates to private employment must be withheld under section 552.101 in conjunction with common law privacy. However, a public employee's salary earned from public employment is not private because it involves a financial transaction with a governmental body. Cf. Gov't Code § 552.022(a)(2). Therefore, the salary information that is marked in the submitted documents that relates to public employment must be released.

We next address your arguments under section 552.117. Section 552.117 excepts from 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. We note that we have read section 552.117 to include the home e-mail addresses of governmental officials or employees as well. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. You explain that all of the current and former county employees at issue have timely elected to keep his or her personal information confidential. Therefore, the county must withhold these employees' home addresses and telephone numbers, social security numbers, and home e-mail addresses under section 552.117.

We also note that the submitted documents contain the social security numbers of individuals who are not county employees. These social security numbers may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by the county pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Prior to releasing any social security number information subject to the 1990 amendments to the federal Social Security Act, you should ensure that no such information was obtained or is maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we address your arguments under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must therefore withhold the Texas driver's license numbers, class of license, and expiration dates under section 552.130. You may not withhold any driver's license numbers not issued by the state of Texas.

In summary, the identity of the individual accused of sexual harassment is not protected under common law privacy and therefore the information you have marked in the submitted documents concerning an allegation of sexual harassment may not be withheld. In addition, the salary information in the submitted documents that relates to private employment must be withheld under section 552.101 in conjunction with common law privacy. However, the salary information that is marked in the submitted documents that relates to public employment must be released. The county must withhold the current and former county employees' home addresses and telephone numbers, social security numbers, and home e-mail addresses under section 552.117. Prior to releasing any social security number information subject to the 1990 amendments to the federal Social Security Act, you should ensure that no such information was obtained or is maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990. Finally, the county must withhold the Texas driver's license numbers, class of license, and expiration dates under section 552.130. The county may not withhold any driver's license numbers not issued by the state of Texas.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 General Services Commission 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 "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" and last name "Le" clearly distinguishable.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DKB/seg

Ref: ID# 150961

Enc. Submitted documents

c: Ms. Sharon Hill  
AFSCME Local No. 1624  
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(w/o enclosures)