



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2004

Mr. Eugene D. Taylor  
County Attorney  
Williamson County  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2004-4821

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203317.

The Williamson County Precinct One Constable's Office, Precinct Two Constable's Office, and Sheriff's Office (collectively, the "county") received requests from the same requestor for all e-mails transmitted from or received on county-owned computers for fourteen named county employees during a specific time period.<sup>1</sup> You inform us that you sought clarification of the requests from the requestor, and you have submitted a copy of the requestor's written responses. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 (1999) (discussing requests for clarification). You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.1175, 552.119,

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<sup>1</sup> You advise that some of the named individuals were only employed by the county during part of the time period in question. However, because you state that the county has some responsive information pertaining to these individuals, generated during the time period in question, we will address your claimed exceptions with respect to responsive information pertaining to these individuals. *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 (1986) (information that did not exist at time governmental body receives request not subject to required disclosure under Public Information Act); *see also* Open Records Decision No. 561 (1990) (governmental body must make good faith effort to relate request to information held by the governmental body).

552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

As a preliminary matter, we note that the submitted documents contain user names and passwords for county computers. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in Open Records Decision No. 581 and our review of the information at issue, we determine that the user names and passwords we have marked in the submitted documents do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Public Information Act and need not be released.

Because you contend that the submitted information is excepted in its entirety under section 552.103 of the Government Code, we next address your claim under that section. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for

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<sup>2</sup> We 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.

information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* You inform us that prior to the date the county received the present requests, the requestor filed a discrimination complaint against the county with the Equal Employment Opportunity Commission (“EEOC”), and you have submitted a copy of the complaint. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1(1982). We therefore find that you have established that the county reasonably anticipates litigation with respect to the requestor’s EEOC complaint. Thus, we determine that information relating to the pending EEOC complaint is excepted from disclosure under section 552.103 of the Government Code. We have marked the information in the submitted documents that is related to the pending EEOC complaint and may be withheld at this time pursuant to section 552.103.

We note, however, that once information has been obtained by all parties to litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information pertaining to the requestor’s EEOC complaint against the county that has been obtained from or provided to all opposing parties in the anticipated litigation is not excepted from disclosure under section 552.103(a) and may not be withheld on that basis. In addition, section 552.103(a) is no longer applicable once the litigation has been concluded or is no longer anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

With respect to the remaining submitted information, upon review of your comments and the submitted documents we find that you have not explained, nor do the documents reflect, how the remainder of the submitted documents are related to the pending EEOC complaint. Consequently, we find you have failed to establish that the remaining information relates to the anticipated litigation, and we determine that the county may not withhold the remaining submitted information under section 552.103.

Next, you contend that the submitted information is excepted from disclosure in its entirety as attorney work product created or developed for civil or criminal litigation. We address your argument that the information consists of attorney work product in both the civil and the criminal context pursuant to section 552.111 of the Government Code, which excepts from disclosure “an interagency or intraagency memorandum or letter that would not be

available by law to a party in litigation with the agency.” This section encompasses the attorney work product privilege found in Rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating that the information was created or developed for trial or in anticipation of litigation by or for a party or a party’s representative. TEX. R. CIV. P. 192.5; Open Records Decision No. 677 at 6-8 (2002). In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation. *Nat’l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204. Information that meets the work product test is confidential under Rule 192.5 provided the information does not fall within the purview of the exceptions to the privilege enumerated in rule 192.5(c). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

As noted above in our discussion of your claim under section 552.103, you have demonstrated that the county anticipates litigation with respect to the requestor’s EEOC claim. However, you have failed to establish that the remaining submitted information that is not subject to section 552.103 was created or developed in anticipation of litigation. Moreover, while you make reference to the holding of the Texas Supreme Court in *Curry v. Walker*, 873 S.W.2d 379, 380 (Tex. 1994), that a request for an attorney’s “entire file” was “too broad” and that “the decision as to what to include in [the file] necessarily reveals the attorney’s thought processes concerning the prosecution or defense of the case,” we note that the requestor has not asked for the county’s “entire file,” but only for certain specified e-mail communications. Because you have failed to establish that any of the remaining submitted information was created or developed by the county in anticipation of litigation, we

determine that the remaining submitted information is not protected by the attorney work product privilege and may not be withheld on that basis.

You also indicate that some of the information at issue is protected by the attorney-client privilege. Section 552.107(1) of the Government Code excepts from disclosure information protected by the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1).<sup>3</sup> Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E).<sup>4</sup> Thus, a governmental body seeking to establish that a communication is protected by the attorney-client privilege must inform this office of the identity and capacity of each individual involved in the communication. Finally, the attorney-client privilege applies only to a communication that is confidential. *Id.* 503(b)(1). A confidential communication is a communication that was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets the definition of a confidential communication depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) of the

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<sup>3</sup> The privilege does not apply when an attorney or representative is acting in a capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Because government attorneys often act in capacities other than that of professional legal counsel, including as administrators, investigators, or managers, the mere fact that a communication involves an attorney for the government does not demonstrate this element.

<sup>4</sup> Specifically, the privilege applies only to confidential communications between the client or a representative of the client and the client’s lawyer or a representative of the lawyer; between the lawyer and the lawyer’s representative; by the client or a representative of the client, or the client’s lawyer or a representative of the lawyer, to a lawyer or representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein; between representatives of the client or between the client and a representative of the client; or among lawyers and their representatives representing the same client. See TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E); see also *id.* 503(a)(2), (a)(4) (defining “representative of the client,” “representative of the lawyer.”)

Government Code generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). Upon review of your comments and the submitted information, we find you have failed to establish that the submitted e-mail communications constitute or document confidential communications made between parties subject to the privilege for the purpose of providing legal services to the county. We therefore determine that the information at issue is not protected by the attorney-client privilege and may not be withheld on that basis.

Next, you contend that the submitted information is excepted in its entirety pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a) of the Government Code 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.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov’t Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the requestor “is the subject of two separate ongoing criminal investigations,” and you advise that “the responsive information relates to specific criminal investigations currently being conducted by law enforcement officers.” As you acknowledge, release of information relating to a pending criminal investigation can interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). In this case, however, you have not reasonably explained, nor is it apparent to this office, how the submitted information in any way pertains to a criminal investigation. Based on our review of your comments and the submitted information, we determine that you have failed to establish that the submitted information is excepted from disclosure under section 552.108(a)(1) in this instance.

Having addressed your claims that encompass the submitted information in its entirety, we next address your claimed exceptions that pertain to discrete portions of the submitted information. You contend that an unspecified portion of the information at issue is excepted from disclosure pursuant to the deliberative process privilege. Section 552.111 also encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2* (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); *Open Records Decision No. 538 at 1-2* (1990). the Government Code.

In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See Open Records Decision No. 615 at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

You assert that a portion of the submitted information "consists of drafts or other initial preparation documents by the various county employees and/or legal staff working on various issues." We have marked a small amount of information in the submitted documents that consists of internal communications relating to the policymaking process of the county and may be withheld under section 552.111. The remainder of the submitted information, however, pertains solely to routine administrative or personnel matters of the county, or is otherwise unrelated to the policymaking processes of the county. Furthermore, although you suggest that the submitted information may contain preliminary drafts of policymaking documents to be released to the public in final form, we find you have failed to identify any such draft documents in the submitted information, and we are unable to identify any such documents upon our review of the information. See Gov't Code § 552.301(e)(2) (governmental body must label specific information to indicate which exceptions apply to which parts of the information). We therefore find that you have failed to establish that section 552.111 is applicable to any portion of the remaining information, and we determine that the information may not be withheld on that basis.

You also contend that a portion of the submitted information is excepted under section 552.101 of the Government Code in conjunction with sections 418.177 and 418.182 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. As part of the Texas Homeland Security Act, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential. Section 418.177 provides:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Section 418.178 provides in pertinent part:

(b) Information is confidential if it is collected, assembled, or maintained by or for a governmental entity and:

- (1) is more than likely to assist in the construction or assembly of an explosive weapon[.]

Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Section 418.182(a) provides:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code §§ 418.177, .178, .181, .182(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state that the submitted information includes law enforcement bulletins and assessments by the U.S. Department of Homeland Security of the risk of persons, property, and critical infrastructure to acts of terrorism, and you explain that this information was disseminated to local law enforcement entities for the purpose of making them aware of vulnerable areas and to suggest certain precautionary measures. Upon review of your comments and the submitted information, we have marked information that is confidential under section 418.181 of the Government Code and must be withheld pursuant to section 552.101. We have also marked a portion of a law enforcement information bulletin in the submitted documents that is confidential under section 418.178 and must be withheld under section 552.101. With respect to the remaining submitted information, however, we find you have failed to adequately explain how any of the information falls within the scope of sections 417.177 or 418.182(a) of the Government Code. We therefore determine that the county may not withhold any of the remaining information under section 552.101 in conjunction with any of the provisions of the Texas Homeland Security Act.

We note that the submitted documents contain information that is protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or 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), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. We have marked information in the submitted documents that the county must withhold pursuant to section 552.101 and common-law privacy.<sup>5</sup> The remainder of the submitted information does not contain highly intimate or embarrassing facts, and is subject to a legitimate public interest. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications, work performance, and circumstances of employee's resignation

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<sup>5</sup> Because we base our conclusion regarding private information in the submitted documents on common-law privacy pursuant to *Industrial Foundation*, we need not reach your argument pursuant to constitutional privacy.

or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, the county may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Next, the submitted documents contain information that may be excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of officials or employees of a governmental body who are peace officers as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether they make an election pursuant to section 552.024. *See* Open Records Decision No. 622 (1994).

We have marked the social security number of a peace officer contained in the submitted documents, which the county must withhold pursuant to section 552.117(a)(2). We have also marked telephone numbers of county employees appearing elsewhere in the documents. Provided the marked telephone numbers are the home or personal cellular telephone numbers of these individuals, the county must withhold the numbers under section 552.117(a)(2) if the individuals are licensed peace officers.<sup>6</sup> If the individuals are not peace officers but requested confidentiality for this information pursuant to section 552.024 prior to the date the county received the present requests, the county must withhold the numbers under section 552.117(a)(1). Otherwise, the marked telephone numbers are not excepted under section 552.117 and must be released.

You also seek to withhold photographs of peace officers contained in the submitted information pursuant to section 552.119 of the Government Code, which provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

(1) the officer is under indictment or charged with an offense by information;

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<sup>6</sup> Based on our findings under section 552.117(a)(2), we need not reach your claim under section 552.1175.

- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. In this instance, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the photographs at issue would endanger the life or physical safety of the officers. We therefore determine that the county may not withhold photographs of peace officers in the remaining submitted documents pursuant to section 552.119.

The submitted documents also contain a Texas driver's license number. Section 552.130 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirements 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[.]

Gov't Code § 552.130. The county must withhold the Texas driver's license number we have marked pursuant to section 552.130 of the Government Code.

The documents also contain the social security number of a member of the public. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, 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.

You contend that the submitted documents contain information that is excepted from disclosure under section 552.136 of the Government Code, which provides in relevant part:

(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. You state that the information at issue "is replete with account numbers and bank routing numbers and other information" that is subject to section 552.136. Upon review, however, we find that the submitted documents do not contain account numbers or bank routing numbers. Furthermore, you have not marked any of the submitted documents to indicate which information you contend is excepted under section 552.136. *See* Gov't Code § 552.301(e)(2). We therefore determine that the county may not withhold any portion of the submitted information pursuant to section 552.136 of the Government Code.

Finally, you contend that e-mail addresses contained in the submitted documents are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. We have marked e-mail addresses in the submitted information that are within the scope of section 552.137(a). You indicate that the individuals at issue have not consented to the release of the e-mail addresses. We therefore determine the county must withhold the e-mail addresses we have marked in the submitted documents pursuant to section 552.137 of the Government Code.

In summary, we have marked information that may be withheld under sections 552.103 and 552.111 of the Government Code. We have also marked information that the county must withhold pursuant to section 552.101 of the Government Code in conjunction with sections 418.178 and 418.181 of the Government Code, and under section 552.101 in conjunction with common-law privacy. We have marked a social security number that must be withheld under section 552.117(a)(2) of the Government Code, as well as information that may be excepted under sections 552.117(a)(2) or 552.117(a)(1), provided the information pertains to county employees who are licensed peace officers or who timely elected confidentiality under section 552.024. A Texas driver's license number must be withheld under section 552.130 of the Government Code. A social security number may be excepted

under section 552.101 in conjunction with federal law. We have marked e-mail addresses that must be withheld under section 552.137 of the Government Code. The remainder of the submitted 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 appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 203317

Enc: Submitted documents

c: Mr. Shawn Newsom  
22300 FM 971  
Granger, Texas 76530  
(w/o enclosures)