



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2005

Ms. Christi Worth
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2005-04494

Dear Ms. Worth:

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# 224714.

The Teacher Retirement System of Texas ("TRS") received a request for the resumes and applications of certain individuals who were interviewed by TRS. You inform us that you have produced some of the requested information but claim that the other information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law 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), *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. In addition, this office has determined that personal financial information not related to a transaction between an individual and a governmental body is generally not subject to a legitimate public interest and is therefore protected by common-law privacy. See Open Records Decision No. 600 (1992).

You claim that salary information provided by individuals applying for a government job is protected by common-law privacy. Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). In this case, we find that the salary information is subject to a legitimate public interest and is therefore not protected by privacy. Accordingly, we find that TRS may not withhold any portion of the submitted information pursuant to section 552.101 and common-law privacy.

Next, you claim that some of the submitted information is subject to section 552.117 of the Government Code. Section 552.117(a)(1) 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. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, TRS may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You inform us, and provide documentation showing, that the TRS employee at issue made a timely election to keep her personal information confidential. Based on your representations and our review, we find that TRS must withhold this employee's home address and telephone number, social security number, and family member information, which we have marked, pursuant to section 552.117(a)(1) of the Government Code.¹

With respect to the social security numbers not subject to section 552.117, we note that amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990.² *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers in the submitted records are 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 Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, TRS should ensure that such information is not obtained or maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Next, we address your claim under section 552.130 of the Government Code. This section prohibits the release of 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

¹As we reach this conclusion, we need not address your claim under section 552.117(a)(3).

²Section 552.101 also encompasses information protected by other statutes.

issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, TRS must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

Lastly, we address your claim that the e-mail addresses contained in the submitted documents are subject to section 552.137 of the Government Code. This section 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* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Therefore, we agree that the e-mail addresses you have highlighted in orange must be withheld under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b). We also marked one additional e-mail address that is subject to section 552.137.

In summary: (1) pursuant to section 552.117(a)(1) of the Government Code, TRS must withhold the home address and telephone number, social security number, and family member information that we have marked; (2) the social security numbers not subject to section 552.117 may be excepted under section 552.101 in conjunction with federal law; (3) the Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code; (4) pursuant to section 552.137 of the Government Code, TRS must withhold the e-mail addresses you have highlighted in orange as well as the e-mail address we have marked unless their owners have consented to their release; and (5) the remaining submitted 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 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, 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 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 10 calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 224714

Enc. Submitted documents

c: Mr. Robert Elder Jr.
Austin American-Statesman
P. O. Box 670
Austin, Texas 78767
(w/o enclosures)