



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2005

Ms. Lori Robertson
Linebarger Goggan Blair & Sampson, L.L.P.
P.O. Box 17428
Austin, Texas 78760

OR2005-07145

Dear Ms. Robertson:

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# 229840.

The Marion County Appraisal District (the "district"), which you represent, received a request for fifty five categories of information. You advise that the district has released some of the requested information. You claim that the information in Exhibit 2 is excepted from disclosure under sections 552.102, 552.103, 552.107, 552.111, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information was created after the district's receipt of the request for information. Thus, this information is not responsive to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). Accordingly, we do not address your arguments for this information, which we have marked, and it need not be released.

Next we note, that Exhibit 2 "Exception 4" includes documents that have been filed with a court. Section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes the court-filed documents expressly public. Therefore, the district may withhold this information only to the extent it is made confidential under other law. *see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). The district claims that this information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code which constitute other law for purposes of section 552.022. Thus, we will address these claims with regard to the court documents as well as the remaining 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.”¹ Gov't Code § 552.101. This section encompasses information other statutes make confidential. The submitted information contains Employment Eligibility Verification I-9 Forms. Section 1324a of title 8 of the United States Code 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). In this instance, release of these Form I-9s would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that the Form I-9s in Exhibit 2, which we have marked, are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Exhibit 2 also includes W-4 forms and a W-2c form. Section 6103(a) of Title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Therefore, the district must withhold these forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of Title 26 of the United States Code.

Exhibit 2 contains a juror questionnaire. Juror questionnaires are made confidential under section 62.0132 of the Government Code. This provision was enacted in 1999 and authorized the Office of Court Administration of the Texas Judicial System to create a standardized juror questionnaire form to be used in courts throughout the state. Gov't Code § 62.0312(a). Section 62.0132(f) states that the completed questionnaire is confidential and not subject to Chapter 552. The questionnaire in Exhibit 2 is a standardized juror questionnaire. Therefore, this juror questionnaire must be withheld under section 552.101 in conjunction with section 62.0132 of the Government Code.

¹This office will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person or ordinary sensibilities, and (2) of no legitimate public interests. See *Industrial Foundation*, 540 S.W.2d at 685.

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. *Id.* at 683. This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual’s criminal history when compiled by a governmental body, see Open Records Decision No. 565 (citing *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), and personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits and optional insurance coverage). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Record Decision 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities); Gov’t Code § 552.022(a)(2) (providing for required public disclosure of name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body). We have marked the information that is confidential under common law privacy and excepted from release under sections 552.101 and 552.102. None of the remaining submitted information is confidential under common law privacy.

You argue that Section 552.103 of the Government Code protects the documents in Exhibit 2 under the label “Exceptions 1, 2, 3.” Section 552.103 of the Government Code provides in part:

(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 is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the district is a defendant in two cases pending before the District Court in Marion County regarding charitable exemptions. You explain that the submitted information in “Exceptions 1, 2, 3” is related to the pending litigation. Upon review, we find that litigation was pending when the district received this request for information. We also find that the responsive submitted information in Exhibit 2, “Exception 1, 2, 3,” relate to pending litigations. Therefore, based on your representations and our review of the this information, we conclude that it is excepted from disclosure under section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the 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 that has either been obtained from or provided to all opposing parties in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the

applicability of section 552.103(a) ends once the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You also claim that some of the information in Exhibit 2, "Exception 4" may be withheld under Section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. 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). Therefore, the district may only withhold the information we have marked under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the districts receipt of this request for information. The district may not withhold this information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election for confidentiality under section 552.024.

Finally, you claim that Exhibit 2, "Exception 4, 5" contains e-mail addresses that are subject to section 552.137 of the Government Code. 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* 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. We have marked e-mail addresses that do not appear to be of a type specifically excluded by section 552.137(c). Thus, the district must withhold these e-mail addresses under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b).

Exhibit 2 also contains social security numbers. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the district must withhold the social security numbers contained in Exhibit 2 under section 552.147.³

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, except as otherwise indicated, the district must release the court document we have marked. The Form I-9s in Exhibit 2 are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system. The district must also withhold the W-4 forms and the W-2 form we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The district must withhold the marked information that is confidential under common law privacy and excepted from release under sections 552.101 and 552.102 of the Government Code. The documents you have entitled "Exceptions 1, 2, 3" in Exhibit 2 may be withheld under section 552.103 of the Government Code. Pursuant to section 552.117(a)(1) of the Government Code, the district must withhold the marked information of any employee who timely elected under section 552.024 to keep the employee's information confidential. Unless the district has received affirmative consent to release any of the marked e-mail addresses, you must withhold them pursuant to section 552.137. The district must withhold the social security numbers contained in Exhibit 2 "Exception 4" under section 552.147 of the Government Code. The remainder of Exhibit 2 must be released to the requestor.⁴

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

⁴As our ruling on these issues is dispositive, we need not address your remaining arguments against disclosure.

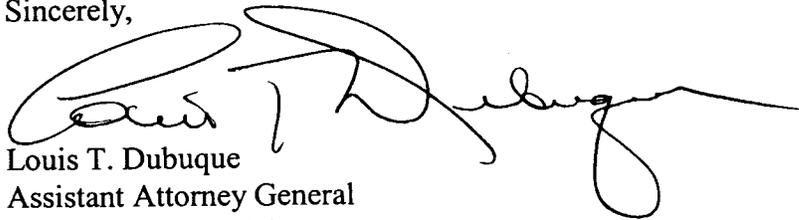
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 229840

Enc. Submitted documents

c: Mr. John Martin
Godwin Gruber
1201 Elm Street, Suite 1700
Dallas, Texas 75270
(w/o enclosures)