ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2005

Mr. Jose Guerrero
Montalvo & Ramirez
900 N. Main
McAllen, Texas 78501

OR2005-08382

Dear Mr. Guerrero:

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# 232223.

The La Joya Water Supply Corporation (the "corporation"), which you represent, received a request for fourteen categories of information regarding the corporation, its board meetings, certain blue prints, and named employees. You state that you will release most of the information. You state that you have no information responsive for certain categories of the request. We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You claim that the submitted information is excepted from disclosure under sections 552.101 , 552.102, and 552.130 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 information protected by other statutes. You state that the certified agendas for May 9, 2005 and May 16, 2005 are confidential under section 551.104(c) of the Government Code, which provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot

be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You state that you have not been presented with a court order that directs the disclosure of the certified agendas that are responsive to this request for information. Thus, we agree that the certified agendas must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

You claim that Exhibits D and E are medical records. Access to medical records is governed by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides:

> (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision Nos. 598 (1991). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Accordingly, Exhibits D and E may be released only in accordance with the MPA.

You claim that Exhibit B is a W-4 form that is confidential under section 6103(a) of Title 26 of the United States Code. Section 6103(a) 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 Opinion MW-372 (1981). Accordingly, we conclude that the corporation must withhold Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You claim that Exhibit C is an I-9 Form. Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code, which 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). Here, you state that the release of the I-9 form would be "for purposes other than for enforcement" of the referenced federal statutes. Therefore, Exhibit C is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You claim that Exhibits G and H are excepted from public disclosure under the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq*. The ADA provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, an employer's medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as a confidential medical records. 29 C.F.R. § 1630.14(c); *see also* Open Records Deciison No. 641 (1996). Furthermore, the federal Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). You have not submitted any argument establishing that Exhibits G and H contain information about any individual's disability, or that the identified individuals have a disability, or that an ADA reasonable accommodation has been provided to the identified individuals. Thus, you have not established that Exhibits G and H are confidential under the ADA. Accordingly, the corporation may not withhold Exhibits G and H under section 552.101 of the Government Code in conjunction with the ADA.

You claim that Exhibit F is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Common-law privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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 found that certain personal financial decisions are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy). Accordingly, you must withhold the information we have marked in Exhibit F under section 552.101 in conjunction with common-law privacy.

You claim that Exhibits I and J are Texas drivers' licenses that are excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

> (a) Information is excepted from required public disclosure 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. Therefore, you must withhold the Texas drivers' licenses in Exhibits I and J under section 552.130 of the Government Code.

We note that some of the submitted information may be protected by section 552.117.[1] 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 request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). In this case, you do not inform us nor provide documentation showing that the employees whose records are at issue timely elected confidentiality under section 552.024. Thus, for employees who timely elected to keep their personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The corporation may not withhold this information for employees who did not make a timely election.

Even if the employees did not elect to withhold their social security numbers under section 552.024, these social security numbers are confidential under section 552.147 of the Government Code.[2] Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the

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[1]The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[2]Added 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).

corporation must withhold the social security numbers contained in the submitted information under section 552.147.[3]

In summary, the certified agendas must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. Exhibits D and E may be released only in accordance with the MPA. The corporation must withhold Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. Exhibit C is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.The corporation must withhold the information we have marked in Exhibit F under section 552.101 in conjunction with common-law privacy. The corporation must withhold Exhibits I and J under section 552.130 of the Government Code. If the employees whose information is at issue timely elected to keep their personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. However, if the employees did not make a timely election, you must withhold their social security numbers under section 552.147 of the Government Code. The remaining 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

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[3]We 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.

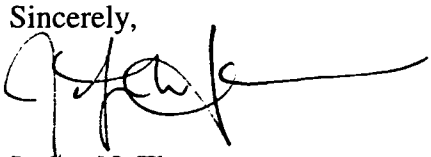
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *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,



Jaclyn N. Thompson
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Open Records Division

JNT/krl

Ref: ID# 232223

Enc. Submitted documents

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(w/o enclosures)