



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2007

Mr. James R. Evans, Jr.  
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Austin, Texas 78735

OR2007-12374

Dear Mr. Evans:

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# 289873.

The Cameron Appraisal District (the "district"), which you represent, received a request for the qualifications of the Cameron Appraisal Review Board members and the district representative present at the requestor's property appraisal review hearing, as well as the audio/video recording of the hearing. You state that you will redact social security numbers pursuant to section 552.147 of the Government Code. Gov't Code § 552.147(b) (authorizing governmental body to redact living person's social security number from public release without necessity of requesting attorney general decision under Act). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to the request for the audio/video recording of the hearing for our review. Therefore, to the extent this information exists we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.102 of the Government Code exempts 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(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 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* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (citing *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976)). Accordingly, we will consider your common-law privacy claim under both sections 552.101 and 552.102.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate and 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. 540 S.W.2d 668 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.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 545 (1990); information concerning the intimate relations between individuals and their family members, see ORD 470; and identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). This office has found, however, that the names, addresses,

and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* ORD 455 (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions).

Upon review, we find that you have failed to demonstrate how any portion of the submitted information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Additionally, you have not demonstrated how any portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. *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 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); *and see* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Accordingly, none of the submitted information may be withheld under section 552.102 or section 522.101 in conjunction with either common-law privacy or constitutional privacy.

Next, we address your argument that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular telephone 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. Gov't Code § 552.117(a)(1); *see* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). We note that a post office box number is not a "home address" for purposes of section 552.117.<sup>1</sup> Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that some of the employees at issue elected to keep all or part of their information confidential. Thus, the district must withhold the information we have marked pursuant to section 552.117(a)(1).

Finally, you claim that a portion of the submitted information is excepted under section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit

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<sup>1</sup> *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Accordingly, the district must withhold the Texas driver’s license information you have marked pursuant to section 552.130 of the Government Code.

In summary, the district must withhold the information we have marked pursuant to section 552.117(a)(1). The district must withhold the marked Texas driver’s license information pursuant to section 552.130 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 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).

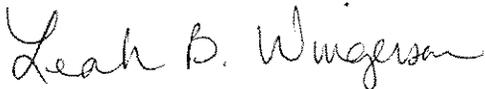
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 289873

Enc. Submitted documents

c: Mr. Akhtar Kamal  
1178 Combs Street  
San Benito, Texas 78586  
(w/o enclosures)