



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2008

Mr. James R. Evans, Jr.
Hargrove & Evans, LLP
4425 Mopac South, Building 3, Suite 400
Austin, Texas 78735

OR2008-03660

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# 305119.

The Cameron Appraisal District (the "district"), which you represent, received a request for the mailing and e-mail addresses of the district board members. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Initially, we note that the requestor only requests the mailing and e-mail addresses of each board member. Accordingly, only the mailing and e-mail addresses in the submitted information are responsive to the request. Thus, the remaining information in the submitted documents is not responsive to this request. This ruling does not address the public availability of nonresponsive information, and the district is not required to release nonresponsive information in response to this request. Accordingly, we will address your arguments with regard to the responsive 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. Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. In addition, this office has found that the following types of information are excepted from required public disclosure under 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); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Based upon your representations and our review of the responsive information, we find that the district has failed to demonstrate how any portion of this information constitutes highly intimate or embarrassing information for the purposes of common-law privacy. Therefore, the district may not withhold any of the responsive information under section 552.101 on that basis.

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)). Upon review, we find that you have not demonstrated how any of the responsive information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district may not withhold any of the responsive information under section 552.101 on that basis.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses, home telephone numbers, and family member information of current officials 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). You state that the information you have marked pertains to current district officials who made elections of confidentiality under section 552.024. However, the submitted information reveals that some of individuals at issue did not elect confidentiality for their responsive information. Additionally, as noted above the request is only for the board members' mailing addresses. Further, portions of the information you have marked are post office box numbers. Section 552.117 only protects home addresses, not mailing addresses or post office box numbers. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 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)). Accordingly, the district may not withhold the mailing addresses it has marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code 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). 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. You state that the e-mail addresses you have marked are personal e-mail addresses and that the owners have not affirmatively consented to their release. We note that in the information you submitted to this office several of the individuals have consented to the release of the marked e-mail addresses. Thus, the district must only withhold the e-mail addresses we have marked under section 552.137. The remaining e-mail addresses you have marked must be released because the relevant members of the public have consented to their release.

In summary, the district must withhold the e-mail addresses we have marked under section 552.137. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 305119

Enc. Submitted documents

c: Mr. William Richardson
217 West Sunset
South Padre Island, Texas 78597
(w/o enclosures)