



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2008

Mr. Richard R. Gore
Assistant Criminal District Attorney
Randall County Justice Center
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

OR2008-07846

Dear Mr. Gore:

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# 312422.

The Randall County Judge's Office (the "office") received a request for employment records pertaining to a named individual.¹ You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have redacted a social security number and an account number from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). 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. *See id.* § 552.147. However, you do not assert, nor does our review of our records indicate, that you have been authorized to withhold account numbers without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to

¹You inform us that the requestor subsequently narrowed his request to exclude any health care records. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the office should refrain from redacting any information that it submits to this office in seeking an open records ruling.

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 doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* ORD 600 at 10. This office also has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked the information that is confidential under common-law privacy and that the office must withhold under section 552.101. However, the remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the office may not withhold it on that ground.

We note that section 552.117(a)(1) of the Government Code may be applicable to some of the remaining information.² Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, 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

²The Office of the Attorney General will raise a mandatory exception, such as section 552.117, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note that a post office box number is not a "home address" for purposes of section 552.117. *See* 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). 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). Thus, pursuant to section 552.117(a)(1), if the employee at issue made a timely election to keep her information confidential, then the office must withhold the employee's personal information. Accordingly, we have marked the information that must be withheld under section 552.117(a)(1) if that section applies. However, you may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep her information confidential.

In summary, the office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The office must also withhold the information that we have marked under section 552.117(a)(1) of the Government Code to the extent that the employee concerned timely requested confidentiality for the information under section 552.024 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 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 312422

Enc. Submitted documents

c: Mr. Shawn D. Twing
Sprouse Shrader Smith P.C.
P.O. Box 15008
Amarillo, Texas 79105-5008
(w/o enclosures)