



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2008

Ms. Thao La  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

OR2008-10432

Dear Ms. La:

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# 317554.

Dallas County (the "county") received a request for the personnel records of four named individuals, including the requestor's client, and the instructions pertaining to the proper handling of incoming mail. You state you have provided the requestor's client's personnel file to the requestor. You claim that the submitted personnel records are excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that you have not submitted the requested incoming mail handling instructions. To the extent information responsive to this aspect of the request existed on the date the county received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302;

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*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).

Next, we must address the county's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You state the county received the request for information on May 7, 2008. However, you did not request a ruling from this office until May 22, 2008. Consequently, we find that the county failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert that the submitted personnel records are excepted under section 552.103 of the Government Code. This section, however, is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold any of the submitted information under section 552.103. However, because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these exceptions.

You claim that the submitted personnel records are confidential under section 552.101 of the Government Code in conjunction with chapter 158 of the Local Government Code, which authorizes and establishes the parameters for the creation of a county civil service commission. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You explain that the county's civil service commission (the "commission") handles employment termination appeal hearings and that the commission's rules and guidelines allow only a certain type of information to be presented during the hearings. You believe the requestor intends to use the submitted records during his client's appeal hearing. You argue that the submitted personnel records are confidential because the records are not

the type of information that can be presented to the commission during an appeal hearing. We note, however, that this office will generally not consider the requestor's intent when rendering an open records decision. Cf. Gov't Code §§ 552.222(b) (stating that governmental body may not inquire into purpose for which information will be used), .223 (requiring uniform treatment of all open records requests). Furthermore, you have not cited any specific provision of law that makes the submitted information confidential. See Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure), 478 at 2 (1987) (stating that as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, the county may not withhold any of the submitted personnel records under section 552.101 of the Government Code.

Next, you assert that the submitted personnel records are confidential under section 552.102 of the Government Code, which 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(a). 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).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (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.*, 540 S.W.2d at 685. We note that this office has concluded that there is a legitimate public interest in the qualifications and performance of a public employee. See Open Records Decision Nos. 470 at 4 (1987), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). The information at issue pertains to the evaluations and discipline of county employees. Therefore, we conclude that there is a legitimate public interest in this information. Accordingly, section 552.102 is not applicable to the submitted information and it may not be withheld on this basis.

Finally, we note that portions of the submitted personnel records may be protected under section 552.117(a)(1) of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

governmental body who timely request that such information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Additionally, section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *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). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The county may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the cellular telephone number we have marked in the submitted information is a personal cellular telephone number that belongs to a county employee who made a timely election under section 552.024, the number must be withheld under section 552.117(a)(1). To the extent the telephone number is not a personal cellular telephone number or does not belong to a county employee who made a timely election under section 552.024 of the Government Code, the marked cellular telephone number may not be withheld under section 552.117(a)(1). Furthermore, if the county employees whose personal information we have marked timely elected to withhold their information under section 552.024, the marked information must be withheld under section 552.117(a)(1). If those employees did not timely elect, the marked information may not be withheld under section 552.117(a)(1). 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). If the governmental body does not file suit over 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

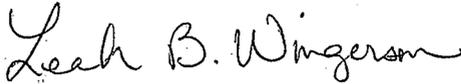
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 317554

Enc. Submitted documents

c: Mr. Dan L. Wyde  
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(w/o enclosures)