



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2008

Mr. John M. Renfrow
Assistant General Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2008-12665

Dear Mr. Renfrow:

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# 321749.

The Harris County Appraisal District (the "district") received a request for the district's 2008 employee disclosure forms. You state that some of the responsive information will be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you have submitted employee election forms and a request for confidentiality as supporting documentation for your claims under sections 552.101 and 552.117 of the Government Code. These forms are not responsive to the instant request. The district need not release non-responsive information in response to this request and this ruling will not address that information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed).

¹We 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.

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 common-law privacy, which protects information 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. See Open Records Decision Nos. 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, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). Upon review, we conclude that portions of the requested information reflect employees' personal financial decisions and do not involve a financial transaction between the employees and a governmental body. Accordingly, the district must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You state that the requested information is subject to section 552.117 of the Government Code. Section 552.117(a)(5) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a commissioned security officer as defined by section 1702.002 of the Occupations Code, regardless of whether the officer complies with section 552.024 or section 552.1175 of the Government Code. See Gov't Code § 552.117(a)(5); Open Records Decision No. 622 (1994). Accordingly, we conclude that the district must withhold the family member information pertaining to the commissioned security officer we have marked in Exhibit 6 under section 552.117(a)(5) of the Government Code.²

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 section 552.024 of the Government Code. See Gov't Code §§ 552.024, .117(a)(1). Whether a particular piece of information is protected by 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). The district 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 of the Government Code prior to the date on which the request for this information was made. You state, and provide documentation

²As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

showing, that the employees in Exhibits 3 through 5 elected to keep their home addresses, home telephone numbers, and social security numbers confidential. We note, however, that the submitted election forms do not allow district employees to elect to withhold family member information. Therefore, section 552.117(a)(1) of the Government Code is not applicable to any of the remaining requested information. Accordingly, none of the remaining requested information may be withheld under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold the family member information we have marked under section 552.117(a)(5) of the Government Code. The remaining requested 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/mcf

Ref: ID# 321749

Enc. Submitted documents

c: Mr. Dan Hart
71 Hibur
Houston, Texas 77024
(w/o enclosures)