



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2008

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2008-13785

Dear Ms. Kaiser:

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#323972.

The Texas Workforce Commission (the "commission") received a request for information regarding the Texas Veterans Leadership Program's newly hired employees. You claim that a portion of the submitted information is excepted from disclosure under sections 552.117, 552.130, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former 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). Whether information is protected by section 552.117(a)(1) must be

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.

determined at the time the request is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employees whose information is at issue timely elected to keep their home addresses, telephone numbers, and social security numbers confidential under section 552.024. Based on your representation and our review, we find that the commission must withhold the employees' home addresses, telephone numbers, and social security numbers, which you have marked, under section 552.117(a)(1).

You claim that portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code. This section provides, in pertinent part:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Gov't Code § 552.130(a)(1). The submitted documents include Texas motor vehicle record information subject to section 552.130. Accordingly, the commission must withhold the information we have marked pursuant to section 552.130.

Next, you assert that the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. This section 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 individual consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). You state that the commission has not received consent for the release of the e-mail addresses at issue. You further state that the e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c). Thus, section 552.137 of the Government Code is applicable to the e-mail addresses at issue and they must be withheld.

You also contend that section 552.140 of the Government Code excepts a portion of the submitted information from disclosure. Section 552.140 provides in relevant part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

(b) The record is confidential for the 75 years following the date it is recorded or otherwise first comes in the possession of the governmental body. During that period the governmental body may permit inspection or copying of the record or disclose information contained in the records only in accordance with this section or in accordance with a court order.

Id. § 552.140(a). This record is confidential for 75 years following the date it is recorded or comes into possession of the governmental body. *Id.* § 552.140(b). However, the governmental body may allow inspection or copying of the document or disclose information in the record in accordance with the section or by court order. *See id.* § 552.140(c) (listing those qualified to obtain information in the DD-214 form or military records). We note that information derived from a DD-214 form is not subject to section 552.140 and may not be withheld on that basis. *Id.* § 552.140(a). Although you do not inform us when the commission came into possession of the submitted DD-214 form, based on our review, the commission came into possession of the form after September 1, 2003. You state that the requestor does not qualify as a person who may inspect the record under section 552.140(c). Thus, we conclude that section 552.140 applies to the submitted DD-214 form and it must be withheld. However, the information derived from the DD-214 form, which you have marked, is not subject to section 552.140 and may not be withheld on that basis.

In summary, the commission must withhold the marked home addresses, telephone numbers, and social security numbers of the employees at issue under section 552.117 of the Government Code. The marked Texas motor vehicle record information and the marked e-mail addresses must be withheld pursuant to sections 552.130 and 552.137 of the Government Code, respectively. The commission must also withhold the submitted DD-214 form under section 552.140 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). 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#323972

Enc. Submitted documents

c: Mr. Timothy B. Zwiefelhofer
Financial Initiatives
101 East 15th Street, Room 556
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(w/o enclosures)