



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2008

Mr. Frank S. Manitzas  
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OR2008-15380

Dear Mr. Manitzas:

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# 327607.

The Bexar Metropolitan Water District ("BexarMet"), which you represent, received a request for several categories of information pertaining to the termination of the requestor's employment. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we address your statement that a portion of the request is "so overly-broad, vague and indefinite that BexarMet is incapable of responding to same."<sup>2</sup> We note that a

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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.

<sup>2</sup>We note that in the future, if BexarMet receives a request that it considers overly broad or ambiguous, then BexarMet should ask the requestor to clarify or narrow the request. *See* Gov't Code § 552.222(b).

governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, because you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider BexarMet to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of your claimed exceptions to that information.

Next, we note that some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. BexarMet need not release non-responsive information in response to this request, and this ruling will not address that information.

We also note that some of the submitted information, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-14799 (2008). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, BexarMet must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2008-14799. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Initially, we note that portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(17) information that is also contained in a public court record; and

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(1), (3), (17), (18). In this instance, the submitted information includes completed reports made of, for, or by a governmental body. BexarMet must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or is expressly confidential under other law. The submitted information also includes information in an account, voucher, or contract relating to the expenditure of public funds, information that is also contained in a public court record, and settlement agreements to which a governmental body is a party. BexarMet must release the information that is subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) unless it is expressly confidential under other law. Although you claim that the information that is subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code, we note that these sections are discretionary exceptions and, as such, are not "other law" for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex.App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, this information may not be withheld on the basis of sections 552.103 or 552.108. Because sections 552.101, 552.102, 552.117, 552.136, and 552.137 of the Government Code provide compelling reasons to withhold information, we will address your arguments under these exceptions for the information that is subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18). Since you claim that the information that is subject to section 552.022(a)(1) is excepted from disclosure pursuant to section 552.108, we will address the your arguments with respect to that information along with the remaining information that is not subject to section 552.022.

We now turn to your arguments for the information that is subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) of the Government Code. 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. Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [.]” *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will

therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 545 (1990), 523 (1989) (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). We find that a portion of the information at issue is highly intimate and not of legitimate public concern. Accordingly, BexarMet must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). BexarMet may only withhold information under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue made timely elections, then BexarMet must withhold the personal information we have marked in the information at issue under section 552.117(a)(1). BexarMet may not withhold this information under section 552.117(a)(1), however, if the individuals at issue did not make timely elections to keep the information confidential.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). BexarMet must withhold the bank account and routing numbers we have marked in the information at issue under section 552.136 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). *See id.* § 552.137(a)-(c). This section excepts from disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the owner of the e-mail address has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You do not inform us that the individual at issue has affirmatively consented to the release of the e-mail address we have marked. Thus, BexarMet must withhold the e-mail address we have marked in the information at issue under section 552.137 of the Government Code.

We now turn to your argument under section 552.108 of the Government Code for the information that is not subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. In this instance, although BexarMet is not a law enforcement agency, the the Bexar County District Attorney’s Office (the “district attorney”) submitted arguments stating that it objects to disclosure of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based on this representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, BexarMet may withhold the information that is not subject to

subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, to the extent information we have marked is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2008-14799, BexarMet must continue to rely on this ruling as a previous determination and withhold or release the identical information in accordance with that ruling. The submitted information that is subject to section 552.022, which we have marked, must generally be released. With respect to the information that is subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) of the Government Code, BexarMet must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the personal information we have marked under section 552.117(a)(1) of the Government Code, if the individuals at issue made timely elections under section 552.024 of the Government Code; (3) the bank account and routing numbers we have marked under section 552.136 of the Government Code; and (4) the e-mail address we have marked under section 552.137 of the Government Code. BexarMet may withhold the information that is not subject to subsections 552.022(a)(3), 552.022(a)(17), and 552.022(a)(18) under section 552.108(a)(1) of the Government Code.

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

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments.

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,



Bill Dobie  
Assistant Attorney General  
Open Records Division

WJD/ma

Ref: ID# 327607

Enc. Submitted documents

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(w/o enclosures)