



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Ms. Michelle Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-01085

Dear Ms. Rangel:

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# 333388.

The Fort Bend County Attorney's Office (the "county attorney") received a request for information pertaining to the amount paid by Fort Bend County employees for their health insurance. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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). The type of information considered intimate and embarrassing by the Texas

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county attorney to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. In addition, 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), 545 (1990). Upon review, we have marked personal financial information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the county attorney must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining information constitutes highly intimate or embarrassing information of no legitimate public concern. Thus, none of the remaining information may be withheld on the basis of common-law privacy.

We note that some of the remaining information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the current and former home addresses and 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). Whether 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). You have not indicated whether the employees whose information we have marked in the submitted information have timely elected to keep their information confidential. The county attorney may only withhold information under section 552.117(a)(1) on behalf of current or former 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, if the employees at issue timely elected to keep their personal information confidential, the county attorney must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employees did not make such an election, the information may not be withheld under section 552.117(a)(1) of the Government Code, and we will address your remaining argument against disclosure of this information.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't

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

Code § 552.147. Therefore, the county attorney may withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code.³

In summary, the county attorney must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. If the employees timely elected to keep their information confidential, then the county attorney must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employees did not make timely elections, then the county attorney may withhold the social security numbers under section 552.147 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jb

Ref: ID# 333388

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that 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.