



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2009

Mr. John Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR2009-07018

Dear Mr. Schneider:

~~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# 344070 (COP ID# SL0922).~~

The City of Pasadena (the "city") received a request for six categories of information relating to Pasadena Municipal Court judges, specifically including 1) biographical, financial, business, and professional information for all municipal judges; 2) information regarding judges' family members who are employed by the city; 3) information on policies regarding ex parte communications; 4) information regarding the city's policy on obtaining public information without using the Act; 5) any communications from city judges to court personnel concerning restricting the public's access to public information, and 6) information on why the court seal is not used on all papers issued by the court. You state you have no information responsive to categories 4, 5, and 6 of the request.¹ You state you have released information responsive to category 3. You claim the submitted information, which is responsive to categories 1 and 2 of the request, is not subject to the Act. In the alternative, you claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert that the submitted information consists of judicial records and, therefore, is not subject to release under the Act. The Act generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." See Gov't Code § 552.003(1)(A), (B). In determining whether a governmental entity falls within the judiciary

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. *See* Open Records Decision No. 646 at 2-3 (1996); *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ). In this instance, the submitted information consists of employment applications. You state that these applications are in the physical possession of the city's Human Resources Department, and assert that the Human Resources Department maintains the applications for the judiciary. Upon review, we find that the submitted information was created and is maintained by the city for administrative purposes. Therefore, the submitted information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

Next, we address your claim that the submitted information is subject to section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note section 552.117 does not encompass an employee's date of birth. We also note that an individual's work address and telephone number are not excepted from disclosure on this basis. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

You have submitted information pertaining to five judges. You have also provided our office with copies of the judges' election forms. We note that three of the judges at issue have timely elected to restrict access to all four categories of personal information. However, one of the remaining judges has chosen not to restrict access to any of her personal information. Additionally, one of the judges has only elected to restrict access to his home address and telephone number. Thus, the city must only withhold the information we have marked pursuant to section 552.117 of the Government Code.²

We note that the remaining information includes information subject to common-law privacy. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by

²Although the social security number of the last judge is not excepted from disclosure under section 552.117, we 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.

judicial decision.”³ Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy 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 types of information considered intimate and embarrassing by the Texas 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. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We also note that the submitted information contains Texas motor vehicle record information that is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides as follows:

- (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;
 - (2) a motor vehicle title or registration issued by an agency of this state; or
 - (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov’t Code § 552.130(a). Thus, the city must withhold the Texas driver’s license information that we have marked under section 552.130 of the Government Code.

Section 552.137 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

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

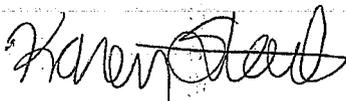
specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We have marked an e-mail address not of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail address pursuant to section 552.137 of the Government Code, unless the city has received consent for its release.

In summary, the city must withhold the personal information that we have marked pursuant to section 552.117(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the marked Texas driver's license information pursuant to section 552.130(a) of the Government Code. The city must withhold the marked e-mail address pursuant to section 552.137 of the Government Code. The remaining submitted information must be released.

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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 344070

Enc. Submitted documents

c: Requestor
(w/o enclosures)