



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 26, 2009

Mr. Leonard Guerra, Jr.
Program Compliance Monitor
Amigos Del Valle, Inc.
1116 North Conway Avenue
Mission, Texas 78572

OR2009-07056

Dear Mr. Guerra:

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# 344172.

Amigos Del Valle, Inc. ("Amigos") received a request for statements given by three named individuals in connection with a specified incident. We understand you to claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the information you submitted.

We initially note that Amigos did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Under section 552.301(b), the governmental body must ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

Amigos appears to have received the present request for information on March 13, 2009; therefore, your ten-business-day deadline under section 552.301(b) was March 27. Although you requested this decision on March 20, you did not claim an exception to disclosure in that communication with this office. Your claim that the submitted information is confidential is contained in a letter mailed March 31. Thus, Amigos did not comply with section 552.301 in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records

Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because you contend that the submitted information is confidential, we will determine whether Amigos must withhold the information on that basis.

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 exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

In this instance, the information at issue consists of the statements of three current or former employees of Amigos. The statements are related to an event that appears to have been sponsored by Amigos, and the individuals who provided the statements appear to have participated in that event as employees of Amigos. This office has frequently stated that information relating to public employees and public employment is generally a matter of legitimate public interest. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees). Thus, we find that the public has a legitimate interest in the information at issue. We therefore conclude that Amigos may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. *See also* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 329 at 1-2 (1982) (reasons for public employee's resignation ordinarily not private).

We note that Amigos may be required to withhold some of the submitted information under section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from 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.

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). The applicability of section 552.117 also can provide a compelling reason for non-disclosure under section 552.302.

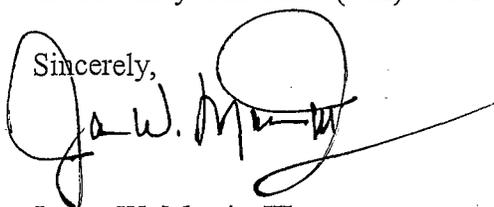
Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf 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.

Amigos must withhold the information that we have marked under section 552.117(a)(1) to the extent that the current or former employees to whom the information relates timely requested confidentiality for the marked information under section 552.024. To the extent that the employees concerned did not request confidentiality for the information in question prior to Amigos' receipt of this request for information, the marked information may not be withheld under section 552.117(a)(1) and must be released. In either event, Amigos must release the rest of the submitted information.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 344172

Enc: Submitted documents

c: Requestor
(w/o enclosures)