



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

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

OR2009-07893

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# 346260.

Amigos Del Valle, Inc. ("ADV") received a request for the personnel file of a named ADV employee. We understand you to raise section 552.101 of the Government Code. We have considered your argument and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the common-law right of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type 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. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm.*

for Freedom of the Press, 489 U.S. 749 (1989) (when considering prong regarding individual's privacy interest, the court recognized distinction between public records found in courthouse files and local police station and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

You indicate that common-law privacy protects information relating to criminal conduct on a submitted employment application. However, the information at issue was supplied by the applicant herself in response to questions posed on the employment application. Thus, this information is not criminal history information compiled by ADV. Accordingly, this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, we find that information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest, and, therefore, generally not protected from disclosure under section 552.101 and common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 (1984) (scope of public employee privacy is narrow), 405 (1983) (manner in which employee performed job cannot be said to be of minimal public interest), 400 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy). Therefore, none of the remaining information you have marked may be withheld under section 552.101 in conjunction with common-law privacy.

Some of the submitted information is also subject to 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 employee of a governmental body who requests that this information be kept confidential under section 552.024. We note a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added). 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 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, ADV must withhold the information we have marked under section 552.117(a)(1), to the extent that the employee at issue timely requested confidentiality for that information under section 552.024.² The remaining 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 346260

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that, to the extent the employee at issue did not elect confidentiality for her social security number under section 552.024, 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. Gov't Code § 552.147(b).