



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2010

Mr. Randall Miller
Navarro County Criminal District Attorney
Navarro County
300 West 3rd Avenue, Suite 203
Corsicana, Texas 75110

OR2010-01140

Dear Mr. Miller:

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# 367910.

The Navarro County Auditor's Office (the "county") received a request for information pertaining to the applicants on the interview or best qualified list, including information pertaining to the selected applicant, that was reviewed by the county for a position with the North Texas High Intensity Drug Trafficking Area ("NTHIDTA"). You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.151 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304(a) (providing that a person may submit comments stating why information should or should not be released).

Initially, we note that the requestor has only asked for information pertaining to the selected applicant and those applicants who were on the "Interview or Best Qualified List." You do not inform us of the existence of an "Interview or Best Qualified List." Thus, to the extent

¹While you raise section 552.102 of the Government Code, we note that section 552.102 only applies to the personnel files of employees of a governmental body. Because the individual at issue is not an employee of the county, section 552.101 of the Government Code is the proper exception to raise in this instance.

that an "Interview or Best Qualified List" exists, only the information of applicants appearing on such a list, as well as of the selected applicant, is responsive to the request, and the remaining information is not responsive and need not be released. We also note that a portion of the submitted information, which we have marked, is not responsive to the request as it was created after the receipt of the request. We further note that the requestor specifically excluded social security numbers, home addresses and telephone numbers, and dates of birth from his request. Thus, this information, which we also have marked, is also not responsive to the instant request. The county need not release the non-responsive information in response to this request, and this ruling will not address that information.

You claim that the selected applicant's name, résumé, preliminary testing, and contract with the county is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. 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 section encompasses the doctrine of common-law privacy. 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. *See 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 demonstrated. *See 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. *See id.* at 683. Upon review, we find that none of the submitted information is intimate or embarrassing and not of legitimate public concern. Thus, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You also seek to withhold the information at issue under section 552.151 of the Government Code, which provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You inform us that the job at issue relates to drug trafficking and therefore implicates the safety of the selected applicant. However, we note that the selected applicant is an independent contractor under contract with the county and not a county

employee.² The plain language of section 552.151 states that the exception to disclosure only applies to “an employee or officer of the governmental body.” Upon review, therefore, we find the county has not demonstrated that the information at issue falls within the scope of section 552.151, and none of this information may be withheld on that basis.

Section 552.137 of the Government Code exempts 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).³ *Id.* § 552.137(a)-(c). 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. The e-mail addresses we have marked in the submitted information do not appear to be a type specifically excluded by section 552.137(c). Accordingly, the county must withhold the marked e-mail addresses under section 552.137, unless the owners of the addresses have affirmatively consented to their release.⁴ *See id.* § 552.137(b).

In summary, the non-responsive information need not be released to the requestor. The county must withhold the information we have marked under section 552.137 of the Government Code. The remaining responsive 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

²We note that section 6 of the “Independent Contractor Agreement” submitted to this office provides in part that, “[t]his agreement shall not render the Contractor an employee, partner, agent of, or representative of [the county], or any participating agency with the NTHIDTA for any purpose. The contractor is and will remain an independent contractor in his/her relationship to [the county] and the NTHIDTA. The NTHIDTA and [the county] shall not be responsible for withholding taxes with respect to the Contractor’s compensation hereunder. NTHIDTA and [the county] are not responsible for nor will they otherwise provide retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.” We further note that the contract with the selected applicant is publically available on-line.

³The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID#

Enc. Submitted documents

c: Requestor
(w/o enclosures)