



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2010

Ms. Ann Bright
Ms. Sally Jo Hahn
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3219

OR2010-08724

Dear Ms. Bright and Ms. Hahn:

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# 382710.

The Texas Parks and Wildlife Department (the "department") received a request for several categories of information relating to a named department employee and a specified project. You claim that the submitted information is excepted from disclosure under section 552.151 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.151 of the Government Code 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 [required public disclosure] 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. The department asserts that the documents in Exhibit B must be withheld to ensure the personal safety of the named department employee. You state the requestor has a "long and disturbing" history of threatening and harassing the employee at

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

issue. You explain the department has taken steps to protect this employee from the requestor, and there are two criminal actions pending against the requestor for harassment of the employee. You argue the submitted information, in the aggregate, could be used by the requestor to find and target the employee to carry out his threats. Based on these representations and our review, we determine the release of portions of the information would subject the named department employee to a substantial threat of physical harm. Therefore, the department must withhold the information we have marked in Exhibit B under section 552.151 of the Government Code. However, the remaining information consists of charges related to past travel and other work related information that does not reveal the named department employee's location. We find the department has not adequately demonstrated that release of any portion of the remaining information would subject the named department employee to a substantial threat of physical harm. Accordingly, the department may not withhold any of the remaining information at issue under section 552.151 of the Government Code.

We note a portion of the remaining information in Exhibit B is excepted from disclosure under 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."² *Id.* § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Therefore, the department must withhold the credit card numbers we have marked in the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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

²The 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).*

address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address that a governmental entity maintains for one of its officials or employees. Therefore, the department must withhold the personal e-mail addresses we have marked in the remaining information under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure or subsection (c) applies.

In summary, the department must withhold the information we have marked under section 552.151 of the Government Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the credit card numbers we have marked under section 552.136 of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure or subsection (c) applies. The remaining information must be released.³

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

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

³We note, and you acknowledge, 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 credit card numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 382710

Enc. Submitted documents

c: Requestor
(w/o enclosures)