



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2010

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2010-09983

Dear Ms. Constantine:

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# 385649.

The Dallas/Fort Worth International Airport Board (the "board") received a request for: (1) information pertaining to a specified investigation involving a former employee and (2) public information requests received by the board regarding this investigation during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the board has not submitted information responsive to the second category of requested information. To the extent any information responsive to this portion of the request existed on the date the board received the request, we assume you have released it. If the board has not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), 302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas*

Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) it 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 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. See *id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find that some of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Thus, the board must withhold the information we have marked under section 552.102(a).¹ However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information is confidential under section 552.102(a).

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). The board may only withhold information 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 on which the request for this information was made. You have redacted portions of the remaining information. We note section 552.024(c)(2) of the Government Code allows a governmental body to redact the home addresses, home telephone numbers, social security numbers, and family member information pertaining to an employee who properly elected to keep his or her information confidential without the necessity of requesting a ruling from this office. See Gov't Code § 552.024(c)(4). You also seek to withhold portions of the remaining information, which you have marked, under section 552.117. Accordingly, to the extent the former employee to whom this information pertains timely requested confidentiality under section 552.024, the board must withhold the information you have redacted, as well as the information we have marked, under section 552.117(a)(1) of the Government Code. However, to the extent

¹As our ruling is dispositive, we need not address your remaining argument against the disclosure of portions of this information.

this former employee did not timely elect confidentiality, the board may not withhold the information at issue under section 552.117(a)(1).² The remaining information you have marked under section 552.117 does not constitute the former employee's home address or telephone number, social security number, or family member information; therefore, the board may not withhold any of the remaining information at issue under section 552.117.

In summary, the board must withhold the information we have marked under section 552.102(a) of the Government Code. The board must withhold the information you have redacted, as well as the information we have marked, under section 552.117(a)(1) of the Government Code, to the extent the former employee timely elected confidentiality under section 552.024 of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 385649

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Regardless of the applicability of section 552.117, 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.