



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2010

Ms. Sharon Coffee Baxter
Senior Litigation Attorney
Travis Central Appraisal District
P.O. Box 149012
Austin, Texas 78714-9012

OR2010-10681

Dear Ms. Baxter:

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# 387089.

The Travis Central Appraisal District (the "district") received a request from three requestors for fourteen categories of information related to the employment, performance, and qualifications of several named district employees.¹ You state you have released or will release information responsive to categories 1-7 and 11-14 of the request to the requestors. You claim the submitted information is responsive to categories eight and ten of the request, and is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹You state the district sought and received clarification from the requestors regarding category ten of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

²Although you also raise section 552.305 of the Government Code, this section is not an exception to disclosure. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See id.*

Initially, we note you neither submitted information responsive to category nine of the request nor informed this office you are releasing such information to the requestors. We assume to the extent information responsive to this portion of the request existed when the district received the request for information, you have released it to the requestor. If not, then 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 that no exceptions apply to requested information, it must release information as soon as possible).

Next, you indicate one of the submitted records was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-10510 (2010). In that ruling, we determined the district must release the submitted information in its entirety. The district must rely on our ruling in Open Records Letter No. 2010-10510 as a previous determination and release the document that was at issue in that ruling in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we consider your raised exceptions for the remaining information not subject to this prior ruling.

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. Section 552.101 encompasses the doctrine of common-law privacy. 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." *Id.* § 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 the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

The submitted information contains personal medical details about a named individual. This office has found 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 that release of the medical details we marked, which we find to be intimate and embarrassing, would not serve any legitimate public interest. The district must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102(a). However, we find the remaining information you seek to withhold pertains solely to public employees' job performances and work conduct. This office has stated, in numerous decisions, that information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and, therefore, generally is not protected from disclosure under 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 performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, the district may not withhold the remaining submitted information under section 552.101 in conjunction with common-law privacy or section 552.102(a).

Portions of the remaining information may be subject to section 552.117(a)(1) of the Government Code.³ This section excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individuals whose information we marked timely elected to keep their family member information confidential pursuant to section 552.024, the district must withhold this information under section 552.117(a)(1) of the Government Code. Otherwise, this information must be released.

The remaining information contains private e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 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 address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we marked are not specifically excluded by section 552.137(c). We note that section 552.137 does not apply to a government

³The 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).

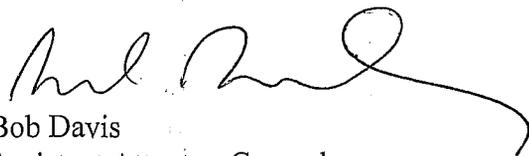
employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. Accordingly, the district must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of these e-mail addresses affirmatively consent to their disclosure.⁴

In summary, the district must rely on Open Records Letter No. 2010-10510 as a previous determination and release the document that was at issue in that ruling in accordance therewith. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102(a) of the Government Code. To the extent the individuals whose information we marked timely elected to keep their information confidential, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. The district must also withhold the private e-mail addresses we marked under section 552.137 of the Government Code unless the owners of these e-mail addresses affirmatively consent to their disclosure. 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

⁴We note 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 private e-mail addresses under section 552.137, without the necessity of requesting an attorney general decision.

Ref: ID# 387089

Enc. Submitted documents

cc: 3 Requestors
(w/o enclosures)