



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2010

Ms. Margo M. Kaiser
Staff Attorney
Open Records Unit
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2010-12649

Dear Ms. Kaiser:

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# 390933 (TWC Tracking No. 100603-042).

The Texas Workforce Commission (the "commission") received a request for the application information filed for the certification of Professional Institute of Dental Assisting, Inc. ("PIDA"). You state the commission will provide some of the requested information to the requestor with certain e-mail addresses withheld under section 552.137 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009) and social security numbers withheld under section 552.147 of the Government Code.¹ Although you state the commission takes no position with respect to the public availability of the remaining requested application information, you state its release may implicate the proprietary interests of PIDA. Accordingly, you state, and provide documentation showing, the commission notified PIDA of the request and of the company's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open

¹The previous determination issued in ORD 684 authorizes all governmental bodies to withhold ten categories of information, including 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. 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.

Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted representative sample of information.²

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from PIDA explaining why its application information should not be released. Therefore, we have no basis to conclude PIDA has protected proprietary interests in this information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3; *see also* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). Consequently, the commission may not withhold PIDA's requested application information on the basis of any proprietary interests PIDA may have in the information.

We note the submitted information contains personal financial information. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). The submitted information contains a private company's employee salary information and copies of stock share certificates. This information, which we have marked, is highly intimate or embarrassing. In this instance, we find it is not of legitimate public concern. Therefore, the commission must withhold this information under section 552.101 of the Government Code in

²We assume 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 those records contain substantially different types of information than that submitted to this office.

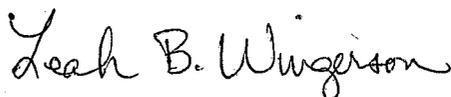
³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

conjunction with common-law privacy. As no exceptions to disclosure have been claimed, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 390933

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Professional Institute of Dental Assisting
314 Highland Mall Boulevard, Suite 495
Austin, Texas 78752
(w/o enclosures)