



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2010

Ms. Destinee Waiters
Assistant General Counsel
Houston Community College
3100 Main Street
Houston, Texas 77002

OR2010-17843

Dear Ms. Waiters:

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# 401081.

Houston Community College ("HCC") received a request for information relating to worker's compensation and/or risk management claims involving a named member of HCC's board of trustees, including records of claims filed, paid, and rejected, payment or non-payment information, and correspondence involving two named HCC employees. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

We first note the requestor does not seek access to "[s]ocial [s]ecurity numbers or medical information that is protected under state or federal law." Thus, those types of information are not responsive to the instant request for information. Therefore, this decision does not address the public availability of the submitted social security numbers or the medical

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes HCC to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information we have marked, and HCC need not release those types of information in response to the instant request.²

We next note that responsive information has been redacted from the submitted documents. Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301, .302. Pursuant to section 552.301(e)(1)(D), the governmental body must submit the specific information at issue to this office, or representative samples if the information is voluminous, except to the extent the information may be withheld pursuant to a previous determination or sections 552.024(c) or 552.147 of the Government Code. *See id.* § 552.301(a), (e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations). In this instance, we are able to ascertain the nature of the redacted information and thus are able to determine whether it is excepted from disclosure. For future reference, however, HCC should refrain from redacting any information from records that are submitted to this office in connection with a request for a decision, unless HCC has specific authorization to do so under the Act. *See* Gov't Code §§ 552.024(c), .147(g); Open Records Decision Nos. 684 (2009), 673 at 7-8.

Next, we address HCC's claim for the responsive information under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. HCC claims section 552.101 in conjunction with section 38.162 of the Insurance Code, which provides in part that "[i]nformation included in an individual closed claim report or an individual summary closed claim report submitted by an insurer under [subchapter D of chapter 38 of the Insurance Code] is confidential and may not be made available by the [Texas Department of Insurance (the "department")] to the public." Ins. Code § 38.162 (a). HCC claims some or all of the responsive information is confidential under section 38.162 of the Insurance Code. We note, however, that section 38.162 is applicable only to information submitted to and maintained by the department. In this instance, the information at issue is maintained by HCC. We therefore conclude HCC may not withhold any of the responsive information under section 552.101 of the Government Code on the basis of section 38.162 of the Insurance Code. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

We note the responsive information includes a federal tax return. Section 6103 of title 26 of the United States Code provides for the confidentiality of "return information," which includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2); *see also* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). HCC must withhold the tax return we

²As we are able to make this determination, we need not address HCC's claim under the Medical Practice Act, subtitle B of title 3 of the Occupations Code.

have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

We also note HCC has redacted a date of birth from the responsive information. Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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 elements of the test must be established. *Id.* at 681-82. Both this office and the Third Court of Appeals have determined that dates of birth are not highly intimate or embarrassing information. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, pet. granted) (“We hold that date-of-birth information is not confidential[.]”); *see also* Attorney General Opinion MW-283 (1980) (public employee’s date of birth not protected under privacy); ORD 455 at 7 (birth dates are not protected by privacy). Therefore, HCC may not withhold the redacted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We next note sections 552.117, 552.130, and 552.136 of the Government Code either are or may be applicable to some of the responsive information.³ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. We note section 552.117(a)(1) encompasses an official or employee’s personal cellular telephone number if the individual pays for the cellular telephone service with his or her personal funds. We also note a post office box number is not a “home address” for the purposes of section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed at home).

Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld 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 of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information HCC may be required to withhold under section 552.117(a)(1) of the

³This office will raise sections 552.117, 552.130, and 552.136 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Government Code. The marked information must be withheld on that basis to the extent the information consists of the home address, home or cellular telephone number, or family member information of the HCC official concerned and to the extent the official timely requested confidentiality for the marked information under section 552.024 of the Government Code.

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1)-(2). HCC must withhold the Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code.

Section 552.136 provides in part that "[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." *Id.* § 552.136(b). This office has determined an insurance policy number constitutes an "access device" under section 552.136. *See id.* § 552.136(a) (defining "access device"). HCC must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, HCC must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (2) the information we have marked under section 552.117(a)(1) of the Government Code to the extent the information consists of the home address, home or cellular telephone number, or family member information of the HCC official concerned and to the extent the official timely requested confidentiality for the marked information under section 552.024 of the Government Code; (3) the Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code; and (4) the insurance policy numbers we have marked under section 552.136 of the Government Code.⁴ The rest of the responsive information must be released.

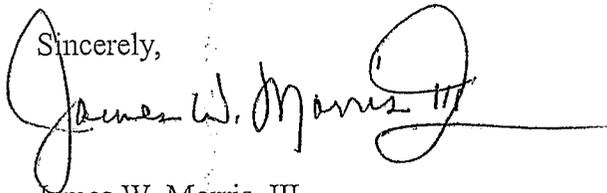
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 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,

⁴We note Open Records Decision No. 684, which this office issued, is a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 and an insurance policy number under section 552.136, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "James W. Morris III". The signature is written in black ink and includes a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 401081

Enc: Submitted documents

c: Requestor
(w/o enclosures)