



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2011

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2011-02550

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 410780 (PIR No. 10-29684).

The Office of the Attorney General (the "OAG") received a request for Hadassah Schloss' personnel information. The OAG released most of the information to the requestor and has redacted information in accordance with section 552.024 of the Government Code.¹ The OAG asserts the remainder is excepted from public disclosure under sections 552.101, 552.102, and 552.139 of the Government Code. We have considered the OAG's arguments and reviewed the submitted sample of information.² We have also received and considered

¹Section 552.024 of the Government Code authorizes a governmental body to redact the home address, home telephone number, social security number, and family member information of a current employee of a governmental body who requests that this information be kept confidential without the necessity of requesting a decision from this office. Gov't Code § 552.024(c); *see id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor).

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.

the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.102(a) 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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we agree the OAG must withhold the information it marked under section 552.102(a).

Next, the OAG claims the information it marked is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "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. Common-law privacy protects information if (1) the information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Furthermore, this office has found some medical information or information indicating disabilities or specific illnesses is protected 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). We have reviewed the information and agree the information the OAG marked is confidential under common-law privacy because it is highly intimate or embarrassing and not of legitimate public interest.

Lastly, the OAG asserts section 552.139 of the Government Code excepts from public disclosure the marked employee user ID. Section 552.139 provides in part:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, . . . , or to the design, operation, or defense of a computer network.
- (b) The following information is confidential:

...

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use.

Gov't Code § 552.139(a), (b)(2). The OAG states the employee's user ID allows the employee access to the OAG's secure computer system and network as a unique user code. Based on this argument, we agree the employer user ID pertains to computer network security or the design, operation, or defense of a computer network for purposes of section 552.139(a). Therefore, the OAG must withhold the marked employee user ID under section 552.139(a).

In summary, the OAG must withhold the information it marked under sections 552.101, 552.102(a), and 552.139 of the Government Code. The OAG must release the remainder.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 410780

Enc: Submitted documents

c: Requestor
(w/o enclosures)