



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 1, 2011

Mr. James Rice Harris  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2011-02966

Dear Mr. Harris:

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# 409012 (C.A. File No. 10GEN2813).

The Harris County Appraisal Review Board (the "board") received a request for all communications between a named individual and twenty other named individuals during a specified time period. You claim the board is not a governmental body subject to the Act. Alternatively, you claim the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, 552.115, 552.117, 552.137, and 552.139 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the board is not a governmental body as defined by section 552.003 of the Government Code. The Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. Under the Act, the term "governmental body" includes:

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<sup>1</sup>Although you also argue the attorney-client privilege under section 552.101 of the Government Code, this office has concluded section 552.107 is the appropriate exception. *See* Open Records Decision No. 676 (2002). Thus we consider your attorney-client arguments only under section 552.107.

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members; [and]

...

(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]

Gov't Code § 552.003(1)(A)(i), (xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). "Public funds" from a state or governmental subdivision of the state can be in various forms and can include free office space, utilities and telephone use, equipment, and personnel assistance. *See* Attorney General Opinion MW-373 (1981). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied).

Both the courts and this office previously have considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), the United States Court of Appeals for the Fifth Circuit recognized opinions of this office do not declare private persons or businesses to be "governmental bodies" that are subject to the Act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, the *Kneeland* court noted that in interpreting the predecessor to section 552.003 of the Government Code, this office's opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), quoting ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a 'governmental body.'" Finally, that opinion, citing others, advises that some entities, such as

volunteer fire departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

*Id.* The *Kneeland* court ultimately concluded the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"), both of which received public funds, were not "governmental bodies" for purposes of the Act, because both provided specific, measurable services in return for those funds. *See id.* at 230-31. Both the NCAA and the SWC were associations made up of both private and public universities. Both the NCAA and the SWC received dues and other revenues from their member institutions. *Id.* at 226-28. In return for those funds, the NCAA and the SWC provided specific services to their members, such as supporting various NCAA and SWC committees; producing publications, television messages, and statistics; and investigating complaints of violations of NCAA and SWC rules and regulations. *Id.* at 229-31. The *Kneeland* court concluded that although the NCAA and the SWC received public funds from some of their members, neither entity was a "governmental body" for purposes of the Act, because the NCAA and SWC did not receive the funds for their general support. Rather, the NCAA and the SWC provided "specific and gaugeable services" in return for the funds that they received from their member public institutions. *See id.* at 231; *see also A.H. Belo Corp. v. S. Methodist Univ.*, 734 S.W.2d 720 (Tex. App.—Dallas 1987, writ denied) (athletic departments of private-school members of Southwest Conference did not receive or spend public funds and thus were not governmental bodies for purposes of Act).

In exploring the scope of the definition of "governmental body" under the Act, this office has distinguished between private entities that receive public funds in return for specific, measurable services and those entities that receive public funds as general support. In Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the "commission"), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, was a governmental body. *See* ORD 228 at 1. The commission's contract with the City of Fort Worth obligated the city to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission, among other things, to "[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities." *Id.* at 2. Noting this provision, this office stated "[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of 'supporting' the operation of the Commission with public funds within the meaning of section 2(1)(F)." *Id.* Accordingly, the commission was determined to be a governmental body for purposes of the Act. *Id.*

In Open Records Decision No. 602 (1992), we addressed the status of the Dallas Museum of Art (the "DMA") under the Act. The DMA was a private, nonprofit corporation that had contracted with the City of Dallas to care for and preserve an art collection owned by the city and to maintain, operate, and manage an art museum. *See* ORD 602 at 1-2. The contract

required the city to support the DMA by maintaining the museum building, paying for utility service, and providing funds for other costs of operating the museum. *Id.* at 2. We noted an entity that receives public funds is a governmental body under the Act, unless the entity's relationship with the governmental body from which it receives funds imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." *Id.* at 4. We found "the [City of Dallas] is receiving valuable services in exchange for its obligations, but, in our opinion, the very nature of the services the DMA provides to the [City of Dallas] cannot be known, specific, or measurable." *Id.* at 5. Thus, we concluded the City of Dallas provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent it received the city's financial support. *Id.* Therefore, the DMA's records that related to programs supported by public funds were subject to the Act. *Id.*

In Attorney General Opinion MW-373 (1981), this office examined the University of Texas Law School Foundation (the "UT Law Foundation"), a nonprofit corporation that solicited donations and expended funds to benefit the University of Texas Law School (the "university"). Pursuant to a Memorandum of Understanding, the university provided the UT Law Foundation space in the law school building to carry out its obligations, utilities and telephone services, and reasonable use of university equipment and personnel to coordinate the activities of the UT Law foundation with the educational operations of the university. This office found such services amounted to support for purposes of the Act and concluded "[s]ince the [UT Law] foundation receives support from the university that is financed by public funds, its records relating to the activities supported by public funds will be subject to public scrutiny." Attorney General Opinion MW-373 at 11 (citing ORD 228). The opinion noted the purpose of the UT Law Foundation was to raise funds and provide resources for the benefit of the university, and considered the provision of office space and other assistance enhanced the cost effectiveness of operating the UT Law Foundation. Further, the opinion noted the university retained control over the relationship of the UT Law Foundation and the university through the authority of the university board of regents to control the use of university property. *Id.* Thus, since the UT Law Foundation received general support from the university, and the university is financed by public funds, the UT Law Foundation was found to be a governmental body for purposes of the statutory predecessor of the Act.

You state the board is not a governmental body because it is not within or created by the executive or legislative branch of state government and the board does not spend public funds. You state the board was created pursuant to article VIII, section 18 of the Texas Constitution, which states:

- (a) The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, and may also

provide for the classification of all lands with reference to their value in the several counties.

(b) A single appraisal within each county of all property subject to ad valorem taxation by the county and all other taxing units located therein shall be provided by general law. The Legislature, by general law, may authorize appraisals outside a county when political subdivisions are situated in more than one county or when two or more counties elect to consolidate appraisal services.

(c) The Legislature, by general law, shall provide for a single board of equalization for each appraisal entity consisting of qualified persons residing within the territory appraised by that entity. The Legislature, by general law, may authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations. Members of a board of equalization may not be elected officials of a county or of the governing body of a taxing unit.

(d) The Legislature shall prescribe by general law the methods, timing, and administrative process for implementing the requirements of this section.

Tex. Const. art. VIII, § 18. Section 18 of article VIII of the Texas Constitution thus states the legislature shall create boards of equalization. Pursuant to this authority, the legislature enacted section 6.41 of the Tax Code, which establishes appraisal review boards for each appraisal district. *See* Tax Code § 6.41; *Sledd v. Garrett*, 123 S.W.3d 592, 595 (Tex. App.—Houston [14th Dist.] 2003, no pet.). Thus, we find the board is created by the legislative branch of state government. *See* Gov't Code 552.003(1)(A)(i). You acknowledge the board is a “board” under subsection 552.003(1)(A)(i) of the Government Code. Further, the board’s members are appointed by a local administrative district judge in accordance with the requirements of the Tax Code.<sup>2</sup> Tax Code § 6.41(d-1), (d-2).

You note section 6.42(c) of the Tax Code provides that “[m]embers of the board are entitled to per diem set by the appraisal district budget for each day the board meets and to reimbursement for actual and necessary expenses incurred in the performance of board functions as provided by the district budget.” *Id.* § 6.42(c). Further, section 6.43 of the Tax Code provides “[t]he [board] may employ legal counsel as provided by the district budget or use the services of the county attorney and may use the staff of the appraisal office for clerical assistance.” *Id.* § 6.43. You acknowledge the board uses the appraisal district office support staff for clerical assistance. We find the use of clerical staff and services by the appraisal district amounts to the general support and operation of the board for purposes of

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<sup>2</sup>We note, prior to Jan 1, 2010, the board was appointed by resolution of the appraisal district board of directors. *See generally* Tax Code § 6.41; Tex. H.B. 1030, 81<sup>st</sup> Leg., R.S. (2009).

the Act. Accordingly, we conclude the board is within the definition of "governmental body" for purposes of subsections 552.003(1)(A)(i) and 552.003(1)(A)(xii) of the Government Code and, thus, is generally subject to the Act. *See, e.g.* Attorney General Opinion GA-0065 (2003) (finding the Texas Water Advisory Council to be within the executive branch of state government, created by the legislative branch of government, and an entity consisting of thirteen members to be directed by one or more elected or appointed members, and therefore a governmental body for purposes of section 552.003(1)(A)(i) of the Government Code); Attorney General Opinion MW-373; *see also* ORD 228. However, you also assert the board is part of the judiciary. Therefore, we will address your arguments the board is not subject to the Act pursuant to the exclusion of the judiciary from the Act found in section 552.003(1)(B) of the Government Code.

Section 552.003(1)(B) of the Government Code expressly excludes the judiciary from the requirements of the Act. Gov't Code § 552.003(1)(B). The Texas Supreme Court determined, in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), the judiciary, for purposes of section 552.003 consists of courts in which the judicial power is vested pursuant to article V, section 1 of the Texas Constitution. 924 S.W.2d at 922. Article V, section 1 provides:

The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioner's Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law. The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

Tex. Const. art. V, § 1. Accordingly, only the courts set forth in article V of the Texas Constitution, and such additional courts provided by law, are members of the judiciary, and thus excluded from the Act pursuant to section 552.003. We note the board is not one of the entities enumerated in article V, section 1 as being part of the judiciary. As noted above, you state the board was created pursuant to article VIII, section 18 of the Texas Constitution as a board of equalization, and section 6.41 of the Tax Code establishes an appraisal review board for each appraisal district. *See* Tax Code § 6.41. Accordingly, the legislature did not establish the board pursuant to article V, section 1, but rather pursuant to article VIII, section 18 of the Texas Constitution.

You also assert the board is an arm of the judiciary or is acting as an agent of the judiciary. You state the board members are appointed by a local administrative district judge, perform judicial functions, and are granted judicial immunity. We note, and you acknowledge, the board is not an arm of the court merely because its members are appointed by judges. In Open Records Decision No. 646 (1996), this office determined the oversight of a supervision and corrections department by district judges was purely administrative in nature. Open Records Decision No. 646 states "[t]he judges connected with a department do not act in a

judicial capacity . . . nor are such records prepared for the use of a court in its official capacity.” ORD 646 at 3. We note, in this instance, a local administrative district judge appoints members of the board pursuant to section 6.41 of the Tax Code as an administrative rather than judicial function. *See* Tax Code § 6.41(d-1) (stating members of board in county of more than 3.3 million or county of more than 350,000 adjacent to county of more than 3.3 million are appointed by local administrative district judge).

Additionally, you state, “[t]he undisputed principle that board members are entitled to absolute judicial immunity in the performance of their judicial functions should be sufficient evidence for qualifications as part of the ‘judiciary’[.]” Judicial immunity may follow an appointment by a judge when the judge appoints others to perform services for the court. *See Delcourt v. Silverman*, 919 S.W.2d 777, 781 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (citing *Byrd v. Woodruff*, 891 S.W.2d 689, 707 (Tex. App.—Dallas 1994, writ denied)). Officers of the court who are integral parts of the judicial process are entitled to judicial immunity if they actually function as an arm of the court. *Id.* As noted above, the board acts pursuant to statutory authority granted it in the Tax Code. Tax Code §§ 6.41- .43. You cite *Sledd v. Garrett*, which addressed judicial immunity for the board members of the Harris County Appraisal Review Board. *See* 123 S.W.3d 592 (Tex. App.—Houston [14th Dist.] 2003, no pet.). The court acknowledged the board members are not judges, but stated judicial immunity applied to quasi-judicial officials, and stated “the United States Supreme Court identified a nonexclusive list of factors for determining whether *administrative officials* perform quasi-judicial functions entitling them to judicial immunity[.]” *Id.* at 594-95 (citing *Butz v. Economou*, 438 U.S. 478, 512 (1978)) (emphasis added). The court did not conclude the board is part of the judiciary and, thus, granted judicial immunity. Rather, the court determined board members perform quasi-judicial functions. *See id.* at 596; *Beck v. Texas State Bd. Of Dental Examiners*, 204 F.3d 629, 634-36 (5th Cir. 2000) (members of state board of dental examiners have judicial immunity when acting in quasi-judicial role in disciplinary proceedings).

The Texas Supreme Court addressed the exercise of judicial power by administrative agencies in *State v. Flag-Redfern Oil Company*:

An administrative agency is not a “court” and its contested case proceedings are not lawsuits, no matter that agency adjudications are sometimes referred to loosely as being “judicial” in nature. Agency adjudications do not reflect an exercise of the judicial power assigned to the “courts” of the State in Tex. Const. Ann. Art. V, § 1 (Supp. 1991); they are simply executive measures taken in the administration of statutory provisions.

*State v. Flag-Redfern Oil Co.*, 852 S.W.2d 480, 485 n.7 (Tex. 1993) (quoting *Beyer v. E.R.S.*, 808 S.W.2d 622, 627 (Tex. App.—Austin 1991), writ denied). As stated above, the board is created by the Tax Code and its duties are established by the Tax Code. Upon review of your arguments and the submitted information, we find you have failed to demonstrate any

of the submitted information was collected, assembled, or maintained by or for the judiciary. Further, you have not established the board is acting as an arm of the judiciary for the purposes of the Act. Accordingly, none of the submitted information constitutes judicial records as contemplated by section 552.003(1)(B) of the Government Code. Therefore, we will address your arguments against disclosure of the submitted information.

You raise the attorney client privilege found in section 552.107(1) of the Government Code for the information contained in Exhibit B. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state Exhibit B involves attorney-client communications between attorneys for the board and board employees and officials that were made for the purpose of obtaining legal advice. You state the board has not waived its privilege with respect to any of the information at

issue. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to some of the information in Exhibit B, which we have marked. Accordingly, the board may generally withhold the information we have marked in Exhibit B under section 552.107 of the Government Code.<sup>3</sup> We note portions of the individual e-mails contained in the otherwise privileged e-mail strings are communications with parties you have not identified. Because you have not explained how these parties are privileged with respect to the e-mails at issue, these e-mails are not privileged. Thus, to the extent these non-privileged e-mails, which we have marked, exist separate and apart from the otherwise privileged e-mail strings, they may not be withheld under section 552.107. Further, we find you have failed to demonstrate how the remaining information falls within the attorney-client privilege. Thus, the board may not withhold any portion of the remaining information in Exhibit B under section 552.107 of the Government Code.

You raise section 552.111 of the Government Code for Exhibits C, D, and E. Section 552.111 of the Government Code excepts from disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

*v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); see ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

This office has also concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

You state Exhibits C, D, and E consist of intra-agency communications of internal pre-decisional deliberations regarding board policy. You state the information at issue consists of advice, recommendations, and opinions of board personnel and draft documents that were released in their final form. Based on your representations and our review of the information at issue, we find the board has demonstrated portions of the information in these exhibits, which we have marked, consist of advice, opinions, or recommendations on the policymaking matters of the board or draft documents that were released in their final form. Thus, the board may withhold the information we have marked in Exhibits C, D, and E under section 552.111 of the Government Code.<sup>4</sup> However, the remaining information at issue is purely factual, administrative, or routine personnel information, and you have not demonstrated this information consists of advice, opinion, or recommendations relating to the policymaking processes of the board. Accordingly, the remaining information in Exhibits C, D, and E may not be withheld under section 552.111 of the Government Code.

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 incorporates the doctrine of common-law privacy, which protects information that (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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes 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. *Id.* at 683.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

This office has further found that some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *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 find a portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we find the board must withhold the information, which we have marked, under section 552.101 in conjunction with common-law privacy.

You raise section 552.115 of the Government Code for the submitted death certificate in Exhibit F. Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 does not apply to information held by the board, the submitted death certificate may not be withheld on this basis.

Section 552.117(a)(1) of the Government Code 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. *See* Gov’t Code § 552.117(a)(1). We note section 552.117 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 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 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. Therefore, to the extent the employees and officials at issue made timely requests for confidentiality under section 552.024, the board must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the board may only withhold the marked cellular telephone numbers if they are personal cellular telephone numbers and the cellular services were paid for with personal funds. If the employees or officials did not timely elect confidentiality for the marked information, the board may not withhold the marked information under section 552.117(a)(1) of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>5</sup> Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). The board must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument,” and includes an account number. *Id.* § 552.136(a). Therefore, the board must withhold the account number we have marked in the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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 id.* § 552.137(a)–(c). Upon review, we find the board must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, in Exhibit B under section 552.137 of the Government Code, unless the owners consent to their release. We further find the board must withhold the private e-mail addresses in the remaining information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners consent to their release.

You assert Exhibit H is excepted from disclosure under section 552.139 of the Government Code. Section 552.139 provides that information is excepted from required public disclosure “if it is information that relates to computer network security, to restricted information under Section 2059.055, or to the design, operation, or defense of a computer network.” *Id.* § 552.139(a). You state Exhibit H consists of computer user names and passwords used to access the board’s computer system. Upon review, we agree the information we have marked in Exhibit H must be withheld under section 552.139 of the Government Code. However, we find you have failed to demonstrate any of the remaining information in Exhibit H relates to computer network security, restricted information under section 2059.055 of the Government Code, or to the design, operation, or defense of a computer network for purposes of section 552.139(a). Accordingly, none of the remaining information in Exhibit H may be withheld under section 552.139 of the Government Code.

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<sup>5</sup>The 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).

Finally, we note the information at issue includes a military discharge record that is subject to section 552.140 of the Government Code. Section 552.140 provides in part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

*Id.* § 552.140(a). Section 552.140 provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). From the submitted information, we are able to determine the board was first in possession of the military discharge form after September 1, 2003. Accordingly, the board must withhold this form, which we have marked, pursuant to section 552.140.<sup>6</sup>

In summary, the board may withhold the information we have marked under section 552.107 of the Government Code; however, to the extent the non-privileged e-mails exist separate and apart from the submitted e-mail strings, they may not be withheld under section 552.107. The board may withhold the information we have marked under section 552.111 of the Government Code. The board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employees and officials whose personal information is at issue made timely requests for confidentiality under section 552.024, the board must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the board may only withhold the marked cellular telephone numbers if they are personal cellular telephone numbers and the cellular services were paid for with personal funds. The board must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code and the account number we have marked under section 552.136 of the Government Code. We further find the board must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, in Exhibit B under section 552.137 of the Government Code, unless the owners consent to their release. The board must also withhold the private e-mail addresses in the remaining information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners consent to their release. The board must withhold the username and password information we have marked in Exhibit H under section 552.139

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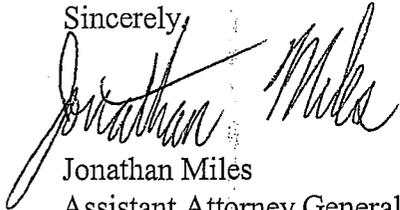
<sup>6</sup>We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information including: Texas license plate numbers under section 552.130 of the Government Code; an e-mail address of a member of the public under section 552.137 of the Government Code, and a DD-214 form under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

of the Government Code and the DD-214 form in Exhibit E under section 552.140 of the Government Code. The remaining information must be released.<sup>7</sup>

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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 409012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>7</sup>We note the information being released contains social security numbers. 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. Gov't Code § 552.147(b).