



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2011

Ms. Elizabeth W. Wallace
Wallace Law Offices
P.O. Box 1508
Sonora, Texas 76950-1508

OR2011-03229

Dear Ms. Wallace:

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# 411122.

The City of Sonora (the "city"), which you represent, received a request for a named individual's resume and information regarding his employment with the city. We understand you to claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 common-law right of 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

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

test must be established. *Id.* at 681-82. The type 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. *Id.* at 683. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon review, we find you have failed to demonstrate that the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, we determine the city may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with 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." Gov't Code § 552.102(a). Upon review, we find none of the information at issue is excepted under section 552.102(a) of the Government Code. Accordingly, none of the information you have marked may be withheld on that basis.

We note the information at issue contains information that is subject to section 552.117 of the Government Code.² Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note that an individual's personal post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to "protect public employees from being harassed *at home*" (emphasis added) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985))). Section 552.117 is also applicable to personal pager and cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information is at issue timely elected to keep his personal information confidential pursuant

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to section 552.024, the city must withhold the employee's cellular telephone number, family member information, and social security number we have marked. The city may not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential.³

We note the information at issue contains Texas driver's license information. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the city must withhold the Texas driver's license type we have marked under section 552.130 of the Government Code.

We note the remaining information contains a public e-mail address. 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). Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address has affirmatively consented to its release under section 552.137(b).⁴

In summary: (1) to the extent the employee whose information is at issue timely-elected confidentiality under section 552.024, the city must withhold the cellular telephone number, family member information, and social security number we have marked under section 552.117(a)(1) of the Government Code; (2) the city must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code; and (3) the city must withhold the public e-mail address we have marked under section 552.137 of the Government Code unless the owner of the e-mail address has consented to its release. The city must release the remaining information.

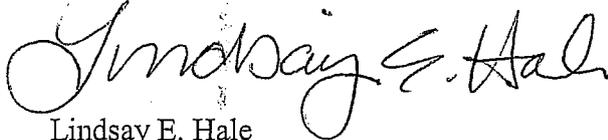
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³In the event the employee's social security number is not excepted from disclosure under section 552.117(a)(1) of the Government Code, we note 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.

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 411122

Enc. Submitted documents

c: Requestor
(w/o enclosures)