



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2011

Ms. Marsha Monroe  
Attorney at Law  
P.O. Box 745  
Sanderson, Texas 79848

OR2011-03752

Dear Ms. Monroe:

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# 412065.

The Terrell County Treasurer (the "county"), which you represent, received a request for a report written by the county judge regarding a named individual. You claim the requested information is excepted from disclosure under section 552.102 of the Government Code. We also understand you to raise section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note the requestor identifies herself as the county commissioner for Precinct One. We also note the purpose of the Act is to prescribe conditions under which members of the general public may obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (addressing statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, the exceptions to required public disclosure under the Act do not control the right of access of an official of a governmental body to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has inherent right of access to information maintained by district). Consequently, whether the requestor has a right of access to the requested information depends on whether she is seeking the information in her official capacity as a county commissioner. This office cannot resolve factual issues in the decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body that is requesting our

decision or on those facts that are discernible from the information submitted for our inspection. See ORD 552 at 4.

In this instance, it not clear whether the requestor is seeking access to the information at issue in her official capacity as a county commissioner or in her personal capacity as a member of the public. Therefore, we will rule conditionally. Thus, if the requestor is acting in her official capacity, then the present request for information is not a request by a member of the public under the Act. In that event, the requested information may not be withheld from the requestor pursuant to the Act's exceptions to disclosure and must be released. See Attorney General Opinion JM-119.<sup>1</sup> But if the requestor is making the present request in her personal capacity as a member of the public, then the Act is applicable to her request, and we will address your arguments against disclosure.

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. This exception 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. Common-law privacy protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

In this instance, the information at issue is related to the termination of a county employee and the circumstances surrounding her termination. As this office has often noted, information relating to public employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. See Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public

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<sup>1</sup>We note the release of the requested information to this requestor, acting in her official capacity, would not constitute a release of the information to the general public, and the county would not waive any potential exceptions to disclosure of the information under the Act. See Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to municipally-appointed citizen advisory board would not constitute release to public as contemplated under Gov't Code § 552.007).

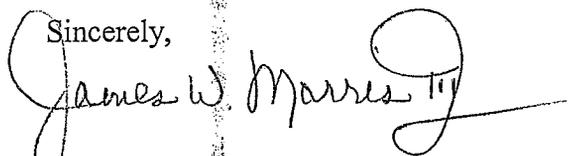
interest), 329 (1982) (reasons for employee's resignation ordinarily not private). We therefore conclude the county may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim section 552.102 of the Government Code. 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). On review, we conclude none of the submitted information is excepted under section 552.102(a) of the Government Code. Accordingly, none of the information in question may be withheld on that basis. As the county claims no other exception to disclosure, the submitted 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](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,



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

JWM/em

Ref: ID# 412065

Enc: Submitted documents

c: Requestor  
(w/o enclosures)