



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2011

Ms. Myrna S. Reingold
Galveston County
722 Moody, Suite 500
Galveston, Texas 77550

OR2011-07107

Dear Ms. Reingold:

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# 418098.

The Galveston County Health District (the "county") received a request for the employment records of a named former employee. You state that, pursuant to Open Records Decision No. 684 (2009), the county is withholding a W-4 form under section 552.101 of the Government Code in conjunction with 6103 of title 26 of the United States Code, a direct deposit authorization form under section 552.101 of the Government Code in conjunction with common-law privacy, and e-mail addresses under section 552.137 of the Government Code.¹ You state you have released some of the requested information. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.122, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Open Records Decision No. 684 is a previous determination issued by this office to all governmental bodies authorizing them to withhold ten categories of information, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, a direct deposit authorization form under section 552.101 of the Government Code in conjunction with the common-law right to privacy, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

(2011). In that ruling, we held the county may withhold the test questions and answers from that examination under section 552.122 of the Government Code. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the county may continue to rely on that ruling as a previous determination and withhold the submitted examination questions and answers in accordance with Open Records Letter No. 2011-01009.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from 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 section encompasses information protected by other statutes. You contend that a portion of the submitted information pertaining to the Texas County and District Retirement System (the “system”) is confidential under section 845.115 of the Government Code. Section 845.115 of the Government Code provides in relevant part:

(a) Information contained in records in the custody of the retirement system or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential. Except as otherwise provided by this section, the retirement system is not required to accept or comply with a request for a record or information about a record of a participant or to seek an opinion from the attorney general because the records of a participant are exempt from the public information provisions of Chapter 552 [of the Government Code]. The information may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the participant or the participant’s attorney, guardian, executor, administrator, conservator, or other person who the director determines is acting in the interest of the participant or the participant’s estate;

(B) a spouse or former spouse of the participant and the director determines that the information is relevant to the spouse’s or former spouse’s interest in member accounts, benefits, or other amounts payable by the retirement system;

²As we are able to make this determination, we do not address your argument against disclosure of this information.

(C) a governmental official or employee and the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the participant in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the participant will have a reasonable opportunity to contest the subpoena.

Gov't Code § 845.115(a). Section 845.115 makes confidential records of a participant in the system's retirement program that are in the system's custody or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the system. *Id.* Participant is defined as "a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system." *See id.* §§ 845.114(a), 845.115(f). The information at issue consists of information obtained from the system concerning a new enrollee. You state the county obtains and maintains the information at issue only because it was acting on behalf of or in cooperation with the system. Based upon this representation, we find the county maintains the information at issue in cooperation with the system. There is no indication the county has otherwise been authorized to release the information. *See id.* § 845.115(a). Further, the requestor is not a person to whom disclosure is permitted under section 845.115. Accordingly, the information you have marked is confidential under section 845.115 of the Government Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 at 4

(1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure 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). You state that the information you have marked relates to an employee's choice of health insurance carrier, optional insurance coverages, allocation of compensation to flexible benefits, and information relating to participating in deferred compensation plans. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Thus, the county must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public concern. Accordingly, the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold the former employee's date of birth under section 552.102(a) of the Government Code. 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). 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). Having carefully reviewed the information at issue, we agree the information you have marked must be withheld under section 552.102(a) of the Government Code.

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. Gov't Code § 552.117(a)(1). 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. The submitted information indicates that the employee timely elected confidentiality of her personal information. We note you have marked the employee's social security number

under section 552.147 of the Government Code.³ However, the submitted information reflects that the employee also elected confidentiality for her social security number under section 552.024 of the Government Code. Thus, the county must withhold the personal information you have marked under section 552.117(a)(1), as well as the additional information we have marked and the former employee's social security number under section 552.117(a)(1).

We note the remaining information contains an e-mail address subject to section 552.137 of the Government Code, which 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 specifically excluded by section 552.137(c). Therefore, the county must withhold the e-mail address we have marked under section 552.137 unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

We note that some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the county may continue to rely on Open Records Decision No. 2011-01009 and withhold the examination questions and answers in accordance with that ruling. The county must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 845.115 of the Government Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the information you have marked under section 552.102 of the Government Code. The county must withhold the employee's marked personal information, including her social security number, under section 552.117(a)(1) of the Government Code. The county must withhold the e-mail address we have marked under section 552.137 of the Government Code. The county must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

³Section 552.147 of the Government Code excepts from disclosure a living person's social security number. *See* Gov't Code § 552.147.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 418098

Enc. Submitted documents

c: Requestor
(w/o enclosures)