



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

Ms. Myrna S. Reingold
Galveston County Legal Department
Galveston County
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2011-17447

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# 437090.

Galveston County (the "county") received two requests, from different requestors, for e-mails contained in a named individual's account. You state you have released some of the requested information. You inform this office you have redacted personal information subject to section 552.117 of the Government Code pursuant to section 552.024 of the Government Code¹ and personal e-mail addresses under section 552.137 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under

¹Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. See Gov't Code § 552.024(c)(2).

²Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies 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.

sections 552.101 and 552.136 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Initially, you assert that the first requestor's request for information has been withdrawn by operation of law because the first requestor has failed to respond to the itemized cost estimate for copies of the requested information. Under section 552.2615 of the Government Code, a governmental body is required to provide a requestor with an estimate of charges when a request to inspect a paper record will result in the imposition of a charge that will exceed forty dollars. *See* Gov't Code § 552.2615. The relevant portion of section 552.2615 provides:

(a) . . . the governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

(1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

(2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and

(3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

(b) A request . . . is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 business days after the date the statement is sent to the requestor that

³Although we understand you to also raise section 552.130 of the Government Code, you have not provided any arguments in support of that exception. Accordingly, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

⁴We assume the "representative sample" of information 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.

- (1) the requestor will accept the estimated charge;
- (2) the requestor is modifying the request in response to the itemized statement; or
- (3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

Id. § 552.2615(a), (b). You provide documentation showing you provided the first requestor with an itemized cost estimate for information responsive to the request. Upon review, we agree the cost estimate complies with the requirements of section 552.2615. Further, you state the first requestor did not respond to the issued estimate in accordance with section 552.2615. Accordingly, we agree that section 552.2615(b) is applicable to this request, and the county need not provide the first requestor with the requested information. We address your arguments with regard to the second requestor's request.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* This section encompasses information protected by other statutes, including section 571.140 of the Government Code. Section 571.140 provides:

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.171, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information[.]

Gov't Code § 571.140(a). You state portions of the submitted information are confidential under section 571.140 of the Government Code. In Ethics Advisory Opinion No. 8 (1992), the Ethics Commission considered whether section 571.140 acts as broad prohibition against disclosure of an ethics complaint and related documents. Guided by federal court cases interpreting similar provisions, the Ethics Commission determined that such a broad restriction would violate the First Amendment to the United States Constitution. Ethics Advisory Opinion No. 8 at 2-4 (1992) (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978) (law allowing criminal prosecution of newspaper for printing information about complaint proceedings was unconstitutional); *Doe v. Gonzalez*, 723 F. Supp. 690 (S.D. Fla. 1988) *aff'd* 886 F.2d 1323 (11th Cir. Fla. 1989) (statute prohibiting complainant from discussing ethics complaint was unconstitutional); *Providence Journal Co. v. Newton*, 723 F. Supp. 846 (D.R.I. 1989) (law prohibiting all public discussion of ethics complaint was unconstitutional)). Instead, the Ethics Commission construed the confidentiality provision to apply only to its own members and staff and not to third parties. Thus, we will defer to the Ethics Commission's interpretation of its own statute in this

situation. *See Tex. Water Comm'n v. Brushy Creek Mun. Util. Dist.*, 917 S.W.2d 19, 21 (Tex. 1996) (“[T]he construction of a statute by an agency charged with its execution is entitled to serious consideration unless the agency’s construction is clearly inconsistent with the Legislature’s intent.”); *see also* Attorney General Opinions JC-0114 at 2 (1999) (same), JM-1212 at 8 (1990) (same). Accordingly, we find section 571.140 does not apply to the information at issue in the hands of the county. Thus, none of the information at issue may be withheld under section 571.140 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types 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. *See id.* at 683. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Record Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy).

Upon our review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude the county must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to establish any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public; therefore, this information is not confidential under common-law privacy, and the county may not withhold it under section 552.101 on that ground.

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

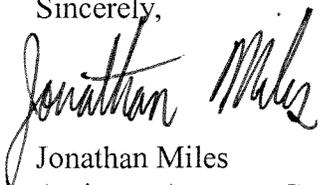
address is of a type specifically excluded by subsection (c).⁵ Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the county must withhold the marked e-mail addresses under section 552.137, unless the owners of the addresses affirmatively consent to their release. *See id.* § 552.137(b).

In summary, 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 marked e-mail addresses under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The remaining 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, 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# 437090

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but will not ordinarily raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).