



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2012

Mr. Jack Nichols  
Houston Housing Authority  
2640 Fountain View Drive  
Houston, Texas 77057

OR2012-01233

Dear Mr. Nichols:

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# 443253.

The Houston Housing Authority (the "authority") received a request for the personnel file of a named individual, including all e-mails discussing her departure, rehiring, and resignation. We note you have redacted a social security number under section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note you have only submitted paystubs and payroll deduction forms to this office. Thus, although you state the authority submitted a representative sample of the requested information, we find the submitted information is not representative of all the information the requestor seeks. Please be advised this open records letter applies only to the types of information you have submitted for our review. Thus, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than the records you submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information is presumed to be public). We therefore assume the authority has released any other types of records that are responsive to the present request,

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

to the extent such records existed when the authority received the request. If not, the authority must release any such records immediately. *See id.* §§ 552.221, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 also encompasses the doctrine of common-law 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 test must be established. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (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), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). Upon review, we find the information you have marked and the additional information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. The authority must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) 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 of the Government Code.<sup>2</sup> 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 be withheld under section 552.117(a)(1) only on behalf of a current or former 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose personal information is at issue timely requested confidentiality under section 552.024, the authority must withhold the information we have

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<sup>2</sup>The 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).

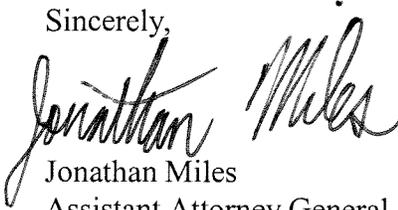
marked under section 552.117(a)(1). Conversely, to the extent the individual did not timely request confidentiality under section 552.024, the authority may not withhold the marked information under section 552.117(a)(1).<sup>3</sup>

In summary, the authority must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose personal information is at issue timely requested confidentiality under section 552.024 of the Government Code, the authority must withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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](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# 443253

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Regardless of the applicability of section 552.117 of the Government Code, 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. See Gov't Code § 552.147(b).