ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2012

Ms. Melissa A. Mihalick
For College of the Mainland
Bracewell & Giuliani, L.L.P.
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2012-13075

Dear Ms. Mihalick:

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# 462441.

The College of the Mainland (the "college"), which you represent, received a request for the non-renewal list that existed on April 30, 2012, information regarding the requestor's previous request, and the employment file of a specified employee. You claim the submitted information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to the portion of the request regarding the specified employee's employment file. To the extent information responsive to the remainder of the request existed on the date the college received the request, we assume you have released it. *See* 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). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 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., 354 S.W.3d 336 (Tex. 2010). Upon review of the information at issue, we find the college must withhold the information we have marked under section 552.102 of the Government Code.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the college may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, to the extent the employee at issue timely elected to keep such information confidential under section 552.024, the college must withhold the information we have marked under section 552.117 of the Government Code.[1] If the employee did not make a timely election under section 552.024 the college may not withhold the information we have marked under section 552.117 of the Government Code. We note section 552.117(a)(1) also encompasses an employee's personal cellular telephone or pager number if the employee pays for the cellular telephone or pager service with his or her personal funds. In this instance, you state the employee at issue receives a stipend from the college to assist in payment for her cellular telephone service. Thus, because the college pays for the employee's cellular telephone service, we conclude the college may not withhold her cellular telephone number under section 552.117(a)(1) of the Government Code. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[2] Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal

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[1]We note, regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living persons social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

[2]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).

investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be "for purposes other than enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms and attachments, which we have marked, are confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

The remaining information contains a driver's license number. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the college must withhold the driver's license number we have marked in the remaining information under section 552.130 of the Government Code.

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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The college must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to their public disclosure.[3]

In summary, the college must withhold (1) the I-9 form and attachment we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, (2) the date of birth we have marked under section 552.102 of the Government Code, (3) the information we have marked under section 552.117 of the Government Code, to the extent the employee at issue timely elected to keep such information confidential under section 552.024, (4) the driver's license number we have marked under section 552.130 of the Government Code, and (5) the e-mail addresses we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to their public disclosure. 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.

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[3]We note Open Records Decision No. 684 (2009) is 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 opinion.

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,

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 462441

Enc. Submitted documents

c: Requestor
(w/o enclosures)