



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2012

Ms. Nova Vella  
Human Resources Department  
Caldwell County  
110 South Main Street #303  
Lockhart, Texas 78644

OR2012-13821

Dear Ms. Vela:

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# 463735.

The Caldwell County Human Resources Department (the "county") received a request for information concerning the requestor and two former county employees. You inform us the county has no responsive information concerning the requestor.<sup>1</sup> You state the county will withhold some of the responsive information pursuant to sections 552.024 and 552.117 of the Government Code and Open Records Decision No. 684 (2009).<sup>2</sup> You claim other

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact information related to a former employee protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the former employee has timely chosen not to allow public access to the information, including the employee's cellular telephone number if he or she paid for the cellular telephone service. *See Gov't Code* §§ 552.024(c)(2), 552.117(a)(1). Open Records Decision No. 670 (2001) grants a previous determination authorizing a governmental body to withhold personal information related to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, under the statutory predecessor to section 552.117(a)(2) of the Government Code without requesting a decision, including the officer's personal cellular telephone number if he or she paid for the cellular telephone service. *See* ORD 670 at 6; *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold specified categories of information without the necessity of requesting a decision, including an e-mail address of a member of the public under section 552.137 of the Government Code. We note the county is not authorized to withhold information pursuant to section 552.1175 of the Government Code without requesting a decision.

responsive information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information you submitted.<sup>3</sup>

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. You claim section 552.101 in conjunction with 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. This office has determined common-law privacy encompasses certain types of personal financial information. Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (“In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities”), 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). We conclude the personal financial information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the county must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 has 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. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). As the remaining information at issue does not include a county employee’s birth date, the county may not withhold any of the remaining information under section 552.102 of the Government Code.

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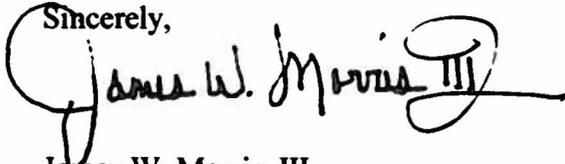
<sup>3</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county to withhold any information that is substantially different from the submitted information. See Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and "M".

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

JWM/bhf

Ref: ID# 463735

Enc: Submitted documents

c: Requestor  
(w/o enclosures)