



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 18, 2016

Ms. Elizabeth Conry Davidson
Counsel for Bexar County Appraisal District
926 Chulie Drive
San Antonio, Texas 78216

OR2016-03943

Dear Ms. Davidson:

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# 598689.

The Bexar County Appraisal District (the "district"), which you represent, received a request for (1) three categories of information pertaining to agricultural use of land and 1-D-1 appraisals during a specified time period; (2) audio recordings of district appraisal review board hearings during a specified time period; (3) communications with the Texas Comptroller's Office regarding appraisals during a specified time period; (4) complaints during a specified time period; (5) directives, policies, and advice pertaining to the priorities and goals of the district and the district Agricultural Advisory Board; (6) correspondence from federal and state representatives and senators during a specified time period; (7) complaints and disciplinary actions regarding the appraisal process; (8) allegations of misconduct against district employees during a specified time period; and (9) duties and job descriptions of district appraisers and other personnel directly involved in the 1-D-1 appraisal process.¹ You indicate the district has released some of the requested information. You also

¹We note the district asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

indicate the district does not have information responsive to a portion of the request.² You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.156 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.³

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes. Section 25.025 of the Tax Code states, in pertinent part:

(a) This section applies only to:

- (1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure;
- (2) a county jailer as defined by Section 1701.001, Occupations Code;
- ...
- (8) an officer or employee of a community supervision and corrections department established under Chapter 76, Government Code, who performs a duty described by Section 76.004(b) of that code; [and]
- ...
- (14) a current or former member of the United States armed forces who has served in an area that the president of the United States by executive order designates for purposes of 26 U.S.C. Section 112 as an area in which armed forces of the United States are or have engaged in combat[.]

²We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

³We assume the “representative samples” of records submitted to this office are 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 that those records contain substantially different types of information than that submitted to this office.

...

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the information does not identify an individual who has made an election under Subsection (b) in connection with the individual's address.

Tax Code § 25.025(a)(1), (2), (8), (14), (b)-(d). Section 25.02 of the Tax Code prescribes the information that must be contained within appraisal records. *See id.* § 25.02. This information includes the name and address of the owner of the property. *See id.* § 25.02(a)(1). You assert, and we agree, the information at issue contains the information required to be contained in appraisal records under section 25.02 of the Tax Code. Thus, we conclude that the information at issue consists of an appraisal record for purposes of section 25.025(b) of the Tax Code.

You inform us the individuals at issue in Exhibit G are subject to section 25.025 of the Tax Code. You state, prior the district's receipt of the instant request, the owners of the properties at issue, who are individuals subject to section 25.025, filed requests for confidentiality made on the form prescribed for that purpose by the comptroller under section 5.07 of the Tax Code with the district and the requests for confidentiality have not been revoked. Thus, pursuant to subsection (b), the home addresses in Exhibit G are confidential. Accordingly, the home addresses in Exhibit G must be withheld under section 552.101 of the Government Code in conjunction with section 25.025(b) of the Tax Code.

Section 552.101 of the Government Code also encompasses section 22.27 of the Tax Code, which provides the following:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

...

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information[.]

Tax Code § 22.27(a), (b)(2). We understand the district is an “appraisal office” for purposes of section 22.27(a). The district states Exhibits I and K were submitted by the property owners at issue in connection with the appraisal of the properties and were provided under a promise of confidentiality. The district states the exceptions in section 22.27(b) do not apply in this instance. Accordingly, we find Exhibits I and K are confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen’s date

of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.⁴ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3.

Upon review, we find the information we have marked and the submitted public citizens' dates of birth satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked and the submitted public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The district has failed to demonstrate, however, the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation

⁴Section 552.102(a) 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).

was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

You seek to withhold Exhibit L under section 552.103. You state, and provide supporting documentation demonstrating, prior to the district's receipt of the instant request for information, the district was a party to three separate lawsuits pertaining to the district's appraisal of the properties at issue. Based upon your representations and our review, we find the district was a party to pending litigation on the date it received the request. Further, you state, and we agree, the information at issue relates to the pending litigation. Accordingly, we conclude the district may generally withhold Exhibit L under section 552.103.

However, we note the opposing parties in the pending litigation have seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, if the opposing parties have seen or had access to information relating to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the information we have marked for release is not protected by section 552.103 and may not be withheld on that basis. We also note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Accordingly, with the exception of the information we have marked for release, the district may withhold Exhibit L under section 552.103 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.⁵ *See* Gov't Code § 552.117(a); Open Records Decision No. 622 (1994). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for it is made. *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 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. We have marked the personal information of district employees. If the employees whose personal information is at issue timely elected to keep their information confidential pursuant to section 552.024, the district must withhold the types of information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may only be withheld if the cellular telephone services are not paid for by a governmental body. The district may not withhold the types of information we have marked under section 552.117(a)(1) if the employees did not timely elect to keep their information confidential pursuant to section 552.024.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). Upon review, we find the district must withhold the types of information we have marked under section 552.1175 if the individuals to whom this information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. However, the district may not withhold the information at issue under section 552.1175 if the individuals are not currently licensed peace officers, or no elections are made.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the district must withhold the types of information we have marked under section 552.130 of the Government Code.

Section 552.139 of the Government code provides, in part, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. *Id.* § 552.139(b)(3). Therefore, the district must withhold the copies of the identification cards issued to employees of a governmental bodies, which we have marked, under section 552.139 of the Government Code.

Section 552.149 of the Government Code provides, in relevant part:

- (a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of [the Act].

(b) Notwithstanding Subsection (a), the property owner or the owner's agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner's protest[.]

Gov't Code § 552.149(a)-(b). Subsections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Bexar County has a population of 50,000 or more. The district states the information submitted as Exhibit J consists of information related to real property sales, descriptions, and characteristics, and it was obtained from private entities. Therefore, we find the district must withhold Exhibit J under section 552.149(a) of the Government Code.

You seek to withhold Exhibit M under section 552.156 of the Government Code, which provides, in relevant part:

(a) Except as otherwise provided by this section, the following information is excepted from disclosure under this chapter:

(1) a continuity of operations plan developed under Section 412.054, Labor Code; and

(2) all records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan developed under Section 412.054, Labor Code.

Id. § 552.156. Section 412.054 of the Labor Code provides, in relevant part,

(a) Each state agency shall work with the [State Office of Risk Management] to develop an agency-level continuity of operations plan that outlines procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. The plan must include detailed information regarding resumption of essential services after a catastrophe, including:

(1) coordination with public authorities;

(2) management of media;

- (3) customer service delivery;
- (4) assessing immediate financial and operational needs; and
- (5) other services as determined by the office.

...

(c) Except as otherwise provided by this section, the following information is confidential and is exempt from disclosure under [the Act]:

- (1) a continuity of operations plan developed under this section[.]

Labor Code § 412.054(a), (c). “State agency” is defined as “a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state.” *See id.* § 412.001(4). You state Exhibit M consists of the district’s Emergency Management Plan. You explain the Emergency Management Plan is a continuity of operations plan created by the district. You contend the Emergency Management Plan was created in accordance with section 412.054 of the Labor Code. However, section 412.054 addresses a state agency’s continuity of operations plan, and we find the district is not a state agency as defined in section 412.001. *See Tax Code* §§ 6.01 (appraisal district is established in each county), .02. (appraisal district’s boundaries are the same as the county’s boundaries). Thus, upon review, we find the district has failed to demonstrate the applicability of section 552.156 of the Government Code, and the district may not withhold Exhibit M on that basis. We additionally find Exhibit M is not confidential under section 412.054(c) of the Labor Code, and may not be withheld under section 552.101 on that basis.

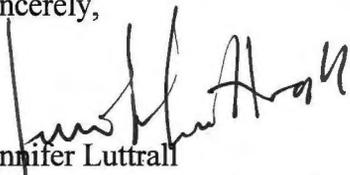
In summary, the district must withhold the home addresses in Exhibit G under section 552.101 of the Government Code in conjunction with section 25.025(b) of the Tax Code. The district must withhold Exhibits I and K under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must withhold the information we have marked and the submitted public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the district may withhold Exhibit L under section 552.103 of the Government Code. If the employees whose personal information is at issue timely elected to keep their information confidential pursuant to section 552.024, the district must withhold the types of information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may only be withheld if the associated cellular telephone services is not paid for by a governmental body. The district must withhold the types of information we have marked under section 552.1175 if the individuals to whom this information pertains are currently

licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. The district must withhold the types of information we have marked under section 552.130 of the Government Code. The district must withhold the copies of the identification cards issued to employees of governmental bodies, which we have marked, under section 552.139 of the Government Code. The district must withhold Exhibit J under section 552.149(a) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 598689

Enc. Submitted documents

c: Requestor
(w/o enclosures)