



July 10, 2001

Mr. James G. Nolan
Supervising Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2001-2963

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 149281.

The Texas Workforce Commission (the "commission") received a request for the following information relating to the Texas Commission on Volunteerism and Community Service ("TXCVCS"):

All manuals, policies, internal memoranda, electronic mail, or other information . . . that address[es] the compensation procedures for employees at [TXCVCS].

Names, job titles, dates of employment, beginning and ending salary amounts, educational backgrounds, employment applications, and job descriptions of all current and former employees employed at [TXCVCS].

All information relating to salary increases for employees employed at [TXCVCS] since January 1, 1999, including, but not limited to, merit raises, promotions, bonuses, etc.

All information relating to grievances filed against [TXCVCS] by current and former employees and applicants for funding since January 1, 1999, including, but not limited to, the nature of the grievance and the final disposition of the grievance.¹

¹You explain that TXCVCS is part of the commission.

You state that you have released some of the requested information. You have submitted representative samples of other responsive records as Exhibits "A," "B," and "C." You contend that the submitted documents contain information that is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.²

We begin with your claim that some of the information in Exhibit "B" is excepted from disclosure under section 552.107(1) of the Government Code. Section 552.107(1) protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" This exception protects information that an attorney cannot disclose because of a duty to the client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. See ORD 574 at 5. Section 552.107(1) does not protect purely factual information and thus does not except from disclosure factual recounting of events or documentation of calls made, meetings attended, and memos sent. *Id.*

You have highlighted the information in Exhibit "B" that you claim is excepted from disclosure under section 552.107(1). You represent to this office that the highlighted portions of the submitted documents are privileged communications between officials of TXCVCS and an attorney in the commission's Office of General Counsel. Having considered your representations and reviewed the information at issue, we agree that the commission may withhold the highlighted information under section 552.107(1).

Next, we address your claim that information contained in Exhibits "A" and "C" is excepted from public disclosure under section 552.117 of the Government Code. Section 552.117(1) protects the home address, home telephone number, and social security number of a current or former public employee, as well as information that reveals whether the employee has family members, *if the current or former employee requested that this information be kept confidential under section 552.024 of the Government Code.* See Open Records Decision Nos. 622 (1994), 455 (1987). Section 552.117(1) does not except this information from disclosure, however, if the current or former employee made an election under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989).

²This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the commission to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

You assert that highlighted social security numbers, home addresses and telephone numbers, and family member information in Exhibits "A" and "C" are excepted from disclosure under section 552.117(1). You indicate that the highlighted information in Exhibit "C" relates to employees who elected to keep this information confidential under section 552.024. You do not inform us whether the highlighted information in Exhibit "A" concerns an employee who made a proper election under section 552.024. We agree that the commission must withhold the highlighted personal information in Exhibits "A" and "C" under section 552.117(1) if the employees to whom the information relates properly elected to keep the information confidential under section 552.024. We have marked one other item of information in Exhibit "A" that also may be protected under section 552.117(1).

A social security number also may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*³ See ORD 622 at 2-4. It is not apparent to this office that any social security number in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the commission to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number in the submitted documents was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, prior to releasing a social security number, the commission should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You also contend that responsive college transcripts in Exhibit "C" are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(b) excepts from disclosure

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

You do not demonstrate to this office that the transcripts in question are maintained in the personnel file of a professional public school employee. Accordingly, information contained in these transcripts may not be withheld from disclosure under section 552.102(b).

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

You also argue that the release of information contained in the transcripts would “constitute a clearly unwarranted invasion of personal privacy, and a matter of little or no legitimate public interest.” Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” The privacy that section 552.102(a) provides to public employees’ personnel records corresponds to the protection that section 552.101 provides in conjunction with the common law right to privacy. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref’d n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Information must be withheld under section 552.101 in conjunction with common law privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Generally, section 552.102(a) protects personnel information from disclosure only when the information in question reveals “intimate details of a highly personal nature.” *See* Open Records Decision No. 423 at 2 (1984). Having reviewed the information in the transcripts for which you claim an exception to disclosure, we conclude that this information is not protected by common law privacy under section 552.102. *See* Open Records Decision No. 467 at 4 (1987) (stating that “[w]hen a public employee or an applicant for public employment submits a college transcript as part of his or her job qualifications, the employee or applicant removes that transcript from the realm of personal or intimate aspects of human affairs”).

Lastly, you also point out that Exhibit “C” contains Texas driver’s license numbers. Section 552.130 of the Government Code provides in relevant part that “[i]nformation is excepted from [required public disclosure] if the information relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). The commission must withhold Texas driver’s license numbers from the requestor under section 552.130.

In summary, the highlighted attorney-client communications in Exhibit “B” are excepted from disclosure under section 552.107(1). The home addresses and telephone numbers, social security numbers, and family member information of current or former commission employees who made proper elections under section 552.024 of the Government Code are excepted from disclosure under section 552.117(1). A social security number also may be confidential under section 552.101 in conjunction with federal law. The commission must withhold Texas driver’s license numbers under section 552.130. The rest of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

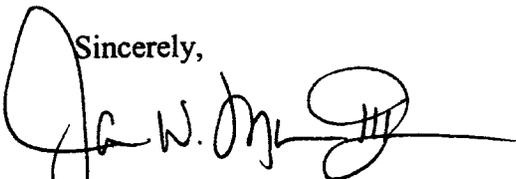
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

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

JWM/sdk

Ref: ID# 149281

Enc. Marked documents

c: Mr. Ramiro Canales
P.O. Box 49046
Austin, Texas 78765
(w/o enclosures)