



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 17, 2002

Mr. Robert Anderson
Sorrell, Anderson, Lehrman, Maixner & Ridulfo
711 North Carancahua
1200 American Bank Plaza
Corpus Christi, Texas 78475

OR2002-7222

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173813.

The Corpus Christi Housing Authority (the "authority"), which you represent, received a request for records pertaining to a Property Manager I position, including applications, resumes, and other information relating to the interview and selection process. You believe that the release of information contained in responsive employment applications would invade the applicants' privacy. We have considered your arguments and have reviewed the information you submitted. We also received correspondence from the requestor.¹ We assume that the authority has released any other responsive information that existed on the date of its receipt of this request for information. If not, then the authority must do so immediately. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the authority to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, we must address the authority's failure to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he

¹*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the tenth business day after the date of receiving the written request [for information]." Section 552.301(e) provides in part:

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

...
(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(D). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

In this instance, you failed to state any exception to disclosure that you claim is applicable to the information that you seek to withhold, as prescribed by section 552.301(b). You also failed to submit the information that you seek to withhold to this office within the fifteen business days prescribed by section 552.301(e)(1)(D). Thus, you have not complied with section 552.301 in requesting this decision. Therefore, the submitted information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can be overcome, however, when the information is confidential by law or if third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. Common-law privacy protects private facts about individuals. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse

in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). You claim that the submitted employment applications contain personal information, the release of which would invade the applicants' personal privacy. Having reviewed these documents, however, we conclude that they do not contain any information that is excepted from public disclosure under section 552.101 in conjunction with common-law privacy. *See also* Open Records Decision No. 455 at 8-9 (1987) (listing types of information relating to applicants for public employment that are not private under section 552.101).

We note, however, that section 552.117 of the Government Code may be applicable to a small amount of the submitted information. Section 552.117(1) excepts from disclosure the home address and home telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether section 552.117 protects a particular item of information must be determined at the time that the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the authority must withhold the home address, home telephone number, and social security number of a current or former employee, as well as information that reveals whether the individual has family members, if the individual made a request for confidentiality under section 552.024 prior to the date on which this request for information was made. The authority also may withhold the section 552.117 information of a newly hired employee during the initial 14-day period in which the employee may make an election under section 552.024. *See* Gov't Code § 552.024(b), (d). We have marked a representative sample of the type of information that the authority may be required to withhold under section 552.117. We note that the authority may not withhold this type of information on behalf of a job applicant whom the authority has not employed. *See also* Open Records Decision No. 455 at 2 (1987) (applicant for employment not within language of section 552.117).

A social security number also may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the authority to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to

such a law 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, before releasing the social security number of an individual other than the requestor, the authority should ensure that the social security number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990. The requestor has a special right of access to her own social security number under section 552.023 of the Government Code.² Information to which the requestor has a right of access under section 552.023 may not be withheld from her under section 552.101 in conjunction with the federal law.³

Lastly, we note that the submitted documents also contain Texas driver's license information. Section 552.130 of the Government Code excepts from disclosure information that 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). We have marked a representative sample of the information relating to Texas driver's licenses that you must withhold under section 552.130. The requestor also has a right of access to her own Texas driver's license information under section 552.023, and thus that information may not be withheld from her under section 552.130.

In summary, the home address, home telephone number, social security number, and family member information of an employee of the authority may be excepted from public disclosure under section 552.117. A social security number also may be excepted from disclosure under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Texas driver's license information must be withheld from the public under section 552.130. The requestor has a special right of access to her own social security number and Texas driver's license information. The rest of the submitted information is not excepted from disclosure and must also be released.

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

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

³*See also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself).

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).

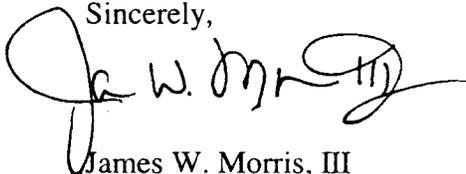
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 173813

Enc: Marked documents

c: Ms. Carolyn A. Fann
5461 Riverview Drive
Robstown, Texas 78380
(w/o enclosures)