



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2005

Mr. M. Gustave Pick
Scott, Hulse Marshall, Feuille, Finger & Thurmond, P.C.
P. O. Box 99123
El Paso, Texas 79999-9123

OR2005-07343

Dear Mr. Pick:

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# 230387.

The Ysleta Independent School District (the "district"), which you represent, received a request from the Denton County Sheriff's Office for "any addresses or phone numbers" the district may have for a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 that the requested information is protected under common-law privacy, which is encompassed by section 552.101. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. 540 S.W.2d at 683. This office has stated on several occasions that individuals' home addresses and telephone numbers are generally not protected by common-law privacy under section 552.101. *See Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987)*

(home addresses and telephone numbers do not qualify as “intimate aspects of human affairs”). We also have frequently stated that a mere expectation of privacy on the part of the individual who provides information to a governmental body does not permit that information to be withheld under section 552.101. *See* Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because the party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information is not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted), 169 at 6 (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution). Upon review of the information at issue, we conclude that the district may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

Next, section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) 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, if the district employee whose information appears in the submitted document made the election for confidentiality prior to the date on which the instant request was made, we find that the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code.

You claim that the named individual’s e-mail address is subject to section 552.137 of the Government Code. This section 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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address 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. Here, the e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137 unless its owner has affirmatively consented to its release. *See* Gov’t Code § 552.137(b).

Lastly, we note that the submitted information contains the named individual’s social security number. Section 552.147 of the Government Code¹ provides that “[t]he social

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

security number of a living person is excepted from” required public disclosure under the Act. Therefore, the district must withhold this social security number under section 552.147.²

In summary: (1) if the district employee whose information appears in the submitted document made a timely election for confidentiality, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code; (2) unless its owner has affirmatively consented to its release, the e-mail address must be withheld under section 552.137 of the Government Code; (3) the social security number must be withheld in accordance with section 552.147 of the Government Code; and (4) the remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

body. *Id.* § 552.321(a); *Tex. Dep't of Pub. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 230387

Enc. Submitted documents

c: Mr. Carl Garner
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(w/o enclosures)