ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2006

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2006-00788

Dear Mr. Swope:

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# 241013.

Harris County (the "county") received a request for information related to the county clerk. You inform us that the county does not have information responsive to a portion of the request.[1] You also state that the county will release most of the requested information, but claim that portions of the submitted document are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted document.

Initially, we note that while you raise sections 552.101 and 552.102 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted document. *See* Gov't Code § 552.301(e)(1) (requiring governmental body to explain the

[1]We note that 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 dism'd); Open Records Decision No. 452 at 3 (1986).

[2]You indicate that you have redacted social security numbers from the submitted document pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number from public release without necessity of requesting decision from this office under the Act).

applicability of the raised exception). Nevertheless, upon review of the submitted document, we note that it contains information that must be withheld under section 552.101. Section 552.101 is a mandatory exception to disclosure that, in part, protects the interests of third parties. Accordingly, we will address this exception to disclosure. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). However, we presume you have withdrawn your claim under section 552.102. *See* Gov't Code §§ 552.301, .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy. 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 (Tex. 1976).

This office has found that certain personal financial information is generally excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common law privacy). The submitted document contains personal financial information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. We have marked this information, which must be withheld from disclosure under section 552.101 in conjunction with common law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The county may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that the county clerk timely elected under section 552.024 to keep her personal information confidential. Therefore, the personal information we have marked must be withheld under section 552.117 of the Government Code.

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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the county must withhold the Texas motor vehicle record information we have marked.

In summary, the county must withhold the information we have marked under sections 552.101, 552.117, and 552.130 of the Government Code. The remainder of the submitted document 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).

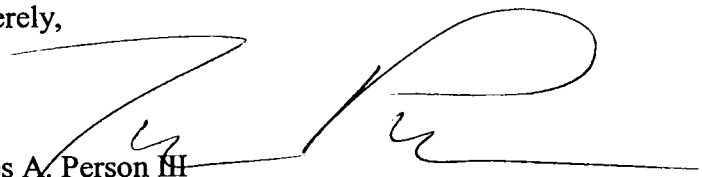
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 241013

Enc. Submitted documents

c: Mr. Jim Thompson
African-American Legal Defense Group
P.O. Box 91212
Houston, Texas 77291-1212
(w/o enclosures)