



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2006

Ms. Syble Missildine  
President/CEO  
Northeast Medical Center Hospital  
18951 Memorial North  
Humble, Texas 77338

OR2006-03658

Dear Ms. Missildine:

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# 246226.

The Northeast Hospital Authority (the "authority") d/b/a Northeast Medical Center Hospital received a request for the resumes of two individuals. You state that the authority does not maintain information responsive to a portion of the request. 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). You claim that the submitted information is exempted from disclosure under sections 552.102 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

The authority seeks to withhold the submitted information under section 552.102 of the Government Code. Section 552.102 exempts 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). This exception applies when the release of information

---

<sup>1</sup>Although you raise section 552.024 of the Government Code, we note that this section is not an exception to disclosure under the Act. Rather, this section permits an employee of a governmental body to choose whether to allow public access to certain information relating to the employee that is held by the employing governmental body. See Gov't Code § 552.024. Section 552.117 of the Government Code is the proper exception to raise in this instance. Accordingly, we address your section 552.024 claim under section 552.117.

*Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common law right to privacy is violated if: (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex.— 1976). After reviewing the information at issue, we find that no portion of the information is highly intimate or embarrassing, and therefore none of the submitted information may be withheld under common law privacy. See Open Records Decision Nos. 542 at 5 (1990) (information in public employee's resume not protected by constitutional or common law privacy under statutory predecessors to sections 552.101 and 552.102 of the Government Code), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 400 at 5 (1983) (statutory predecessor to section 552.102 of the Government Code protected information only if its release would lead to clearly unwarranted invasion of privacy). Therefore, the authority may not withhold any of the submitted information under section 552.102 on the basis of common law privacy.

Section 552.117(a)(1) 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 request that this information be kept confidential under section 552.024. 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 authority may only withhold information under section 552.117 on behalf of a current or former official or employee who elected to keep information confidential pursuant to section 552.024 *prior* to the date on which the request for this information was received. In this instance, the former employee at issue did not elect to keep his personal information confidential pursuant to section 552.024 prior to the date the authority received the request for information. Therefore, none of the submitted information may be withheld under section 552.117 of the Government Code. As you raise no further exceptions to disclosure and the submitted information is not otherwise confidential by law, the submitted information must 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 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,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/er

Ref: ID# 246226

Enc: Submitted documents

c: Ms. Judi Arbogast  
Humble Observer  
200 North Houston Avenue, BI  
Humble, Texas 77338  
(w/o enclosures)