ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County - Transactions Division
P. O. Box 1748
Austin, Texas 78767

OR2006-07208

Dear Ms. Joe:

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# 253328.

The Travis County Human Resources Management Department (the "county") received a request for the personnel files for four named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.147 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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[1]Although you initially raise sections 552.102, 552.107, 552.130, 552.136, and 552.137 of the Government Code, you have not presented arguments explaining how these exceptions apply to the submitted information. Therefore, we presume you have withdrawn your claims under these exceptions. *See* Gov't Code §§ 552.301,.302.

[2]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you inform our office that the county does not maintain a portion of the requested information. Instead, you state that a portion of the requested information is maintained by the Travis County Clerk's office. Section 552.201(b) of the Government Code provides that "[e]ach elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer's office." Gov't Code § 552.201(b). You represent that the proper custodian of a portion of the requested personnel information is the Honorable Dana DeBeauvoir, the Travis County Clerk. Based on your representations, we conclude that because the county does not maintain some of the requested personnel records and is not the proper custodian of such information, the Act does not require the county to respond to that portion of the request.[3] This ruling only reaches the information that the county maintains.

You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. *Id.* at 683. Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* We have considered your arguments and reviewed the information at issue. The county has not made a showing of "special circumstances" that warrant the county to withhold the submitted information. Therefore, we determine that none of the submitted information may be withheld on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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 of the Government Code. *See* 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 made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), the county

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[3]As we are able to make this determination, we do not address your Rule 12 arguments.

must withhold the types of information you have marked if the employees at issue elected to keep such information confidential. If the employees at issue did not elect to keep such personal information confidential, the information must be released.

Regardless of the applicability of section 552.117, section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, if section 552.117 is not applicable, the county must still withhold the social security numbers contained in the submitted information under section 552.147.[4]

In summary, to the extent the employees at issue timely elected confidentiality, the information you have marked must be withheld under section 552.117(a)(1) of the Government Code. Regardless, the county must withhold the requested social security numbers under section 552.147 of the Government Code. The remaining 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

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[4]We 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.

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,

Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 253328

Enc. Submitted documents

c: Mr. Michael Buesgens
500 E. Stassney #1023
Austin, Texas 78745
(w/o enclosures)