



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2006

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2006-11896

Dear Mr. Ramirez:

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# 261605.

The Lower Colorado River Authority (the "authority") received a request for information pertaining to the requestor, as well as all employment records for a named authority employee. You state that the authority has released some of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.102, 552.117, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code excepts 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under

¹ Although you also raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. See Gov't Code § 552.024.

the doctrine of common law privacy as incorporated by section 552.101 of the Government Code.²

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.*, 540 S.W.2d at 685. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990). Upon review, we agree that some of the tax withholding information in Exhibit C and the benefit enrollment information in Exhibit D is excepted from disclosure under section 552.102(a) in conjunction with common law privacy. Accordingly, the authority must withhold this information, which we have marked, pursuant to section 552.102(a) and common law privacy.

You also claim that portions of Exhibit C are excepted from disclosure under section 552.117(a)(1) of the Government Code. 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 timely elect to keep this information confidential pursuant to section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular mobile telephone number, provided that the cellular mobile phone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is public must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You do not inform us whether the employee at issue timely elected to keep his information confidential. We therefore determine that if the individual at issue timely elected to keep such information confidential pursuant to section 552.024, the authority must withhold the information you have marked, as well as additional information we have marked, pursuant to section 552.117(a)(1). If, however, the employee did not timely elect to keep his information confidential, the authority may not withhold this information under section 552.117(a)(1).

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. Gov't Code § 552.147. Therefore, if section 552.117 is not

² We note that 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.

applicable, the authority must still withhold the marked social security number under section 552.147.³

Next, we address your claim under section 552.130 of the Government Code, which 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. Accordingly, the authority must withhold the Texas driver’s license information we have marked pursuant to section 552.130.

Finally, we address your claim under section 552.136 of the Government Code. This section states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. We have marked the bank account number that the authority must withhold pursuant to section 552.136.

In summary, the authority must withhold the information we have marked under section 552.102(a) of the Government Code in conjunction with common law privacy. If the individual at issue timely elected to keep his information confidential pursuant to section 552.024, the authority must withhold the information you have marked, as well as additional information we have marked, under section 552.117(a)(1) of the Government Code. If section 552.117 is not applicable, the authority must still withhold the social security number you have marked under section 552.147 of the Government Code. The authority must also withhold the bank account number we have marked pursuant to section 552.136 of the Government Code. The remaining 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).

³ 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.

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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 261605

Enc. Submitted documents

c: Mr. John Kevin McMillan
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(w/o enclosures)