



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2007

Mr. Joe R. Tanguma  
Walsh, Anderson, Brown,  
Schulze & Aldridge, P.C.  
P. O. Box 168046  
Irving, Texas 75016

OR2007-03760

Dear Mr. Tanguma:

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# 274863.

The Connally Independent School District (the "district"), which you represent, received a request for information pertaining to the life insurance coverage of a deceased employee. You state that you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code. 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(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85. Accordingly, we will consider your section 552.101 and section 552.102(a) privacy claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. In addition, 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 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). However, the right of privacy is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). We therefore conclude that the deceased individual's privacy right in the information at issue has lapsed and so it may not be withheld on the basis of protecting the deceased individual's privacy.

However, if the release of information about a deceased person reveals highly intimate or embarrassing information about living persons, the information must be withheld under common-law privacy. *See* Attorney General Opinion JM-229. In this case, the submitted information reveals the identity of the deceased employee's primary beneficiary. Beneficiaries have a common-law right of privacy in financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 373 at 3 (1983). Accordingly, the primary beneficiary's identifying information, which you have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the present 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 timely request that such information be kept confidential under section 552.024. Gov't Code § 552.117. 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).

You inform us that the employee whose information is at issue made a timely election for confidentiality under section 552.117(a)(1) deems certain information confidential only in order to protect the privacy of employees. Thus, the home address, home telephone number, social security number and information revealing whether the deceased employee has family members may not be withheld under section 552.117(a)(1) of the Government Code. *Cf.* Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would

follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Therefore, the information you have marked under section 552.117(a)(1) of the Government Code may not be withheld on this basis.

Section 552.147 of the Government Code provides that the social security number of a living person is excepted from required public disclosure under the Act. The district may withhold the social security number we have marked pursuant to section 552.147 of the Government Code.

In summary, the district must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district may withhold the social security number we have marked under section 552.147 of the Government Code. *The remaining information must be released to the requestor.*<sup>1</sup>

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

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<sup>1</sup>We note that some of the information being released contains information that would otherwise be confidential. However, because this information belongs to the requestor’s client, it may not be withheld in this instance. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the district receives another request for this particular information from a different requestor, then the district should again seek a decision from this office.

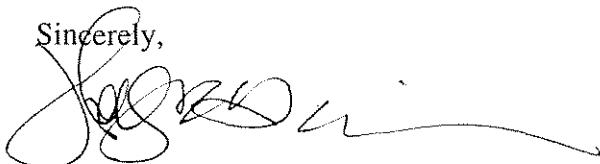
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read 'Holly R. Davis', with a long horizontal flourish extending to the right.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 274863

Enc. Submitted documents

c: Mr. Jeff Arnier  
Ross and Matthews, P.C.  
3650 Levell Avenue  
Fort Worth, Texas 76107  
(w/o enclosures)