



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2009

Ms. Zindia Thomas
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2009-01841

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 334740 (PIR Nos. 08-23790 & 08-23908).

The Office of the Attorney General (the "OAG") received two requests for information pertaining to the requestor and her termination. However, the OAG withdrew its request for a decision as to one request because the requestor withdrew her request for information by operation of law. *See* Gov't Code § 552.2615. As for the remaining request, the OAG states it will release some information and asserts the remainder is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code.¹ We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.²

¹The OAG has withheld a social security number from public disclosure pursuant to section 552.147 of the Government Code, which 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. Gov't Code § 552.147(b). Thus, we need not discuss the applicability of section 552.117 of the Government Code to the social security number.

²We 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.

First, the OAG states it has withheld some of the requested information based on Open Records Letter No. 2008-0793 (2008), which addressed some of the same information, because the law, facts, and circumstances have not changed since the issuance of that ruling. *See* Open Records Decision No. 673 (entity may rely on previous determination if 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types 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. 540 S.W.2d at 683. After review of the information, we conclude the OAG may not withhold the information it marked under common-law privacy because it is not highly intimate or embarrassing information.

Next, we address the OAG's assertion 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 request that this information be kept confidential under section 552.024 of the Government Code. 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 OAG explains the employees at issue timely elected to keep their personal information confidential. Thus, the OAG must withhold the information we marked under section 552.117(a)(1), including a personal cellular phone number because the OAG states it does not pay for the employee's cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular phone numbers paid for by governmental body and intended for official use).

The OAG asserts the private e-mail address it marked is excepted from disclosure under section 552.137. Section 552.137 provides an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure. Gov't Code § 552.137(a). However, a private e-

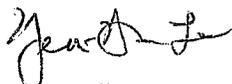
mail address may be disclosed if the member of the public affirmatively consents to its release. *Id.* § 552.137(b). Here, the OAG states the individual at issue has not consented to the release of her e-mail address. Thus, the OAG must withhold the private e-mail address it marked under section 552.137.

In summary, the OAG must withhold the employees' personal information we marked under section 552.117 and the private e-mail address it marked under section 552.137. The OAG must release the remainder.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 334740

Enc: Marked documents

c: Requestor
(w/o enclosures)