



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 13, 2009

Ms. Laura Garza Jimenez
County Attorney
Nueces County Courthouse
901 Leopard, Room207
Corpus Christi, Texas 78401-3680

OR2009-01959

Dear Ms. Jimenez:

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# 334878.

The Nueces County Hospital District (the "district") received a request for a Planned Parenthood grant application. You do not take a position as to whether the submitted information is excepted under the Act; however, you state that you notified Planned Parenthood of South Texas ("Planned Parenthood") of the district's receipt of the request for information and of Planned Parenthood's right to submit arguments to this office as to why the requested information should not be released to the requestor. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Planned Parenthood has responded to this notice and argues that portions of the submitted information are excepted under sections 552.102 and 552.138 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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*

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Bd., 540 S.W.2d 668, 685 (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. 540 S.W.2d at 683. 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), 545 (1990).

We find that portions of the submitted information, which we have marked, are intimate or embarrassing and of no legitimate public concern. In this regard, we note that the salary information we have marked relates to individuals identified in the submitted information. None of the remaining salary information at issue is associated with identified individuals. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Information must 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.*

Planned Parenthood argues that the release of certain addresses, telephone numbers, and e-mail addresses contained in the submitted information would subject the individuals to whom this information relates to "harassment and abuse by parties and organizations opposed to the mission and educational programs of" Planned Parenthood. Based on Planned Parenthood's representations and our review of the submitted information, we find that section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy is applicable to the addresses and telephone numbers that Planned Parenthood seeks to withhold in the submitted information. Therefore, the district must withhold this information, which we have marked, under section 552.101 in conjunction with the "special circumstances" aspect of common-law privacy. However, we further conclude that the district may not withhold the e-mail addresses at issue on the basis of "special circumstances".

Planned Parenthood argues that portions of the remaining information are excepted under section 552.102 of the Government Code. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102(a) is applicable only to the personnel records of employees of governmental bodies. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 444 at 3-4 (1986), 423 at 2 (1984). In this instance, none of the

submitted information is maintained in the personnel files of the district. Therefore, section 552.102 is not applicable to any of the submitted information.

Finally, with regard to the e-mail addresses of Planned Parenthood board members, Planned Parenthood argues that this information should be withheld under section 552.138 of the Government Code. Section 552.138 provides in part:

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from [required public disclosure] if it is information that relates to:

...

(6) the home address or home telephone number of a member of the board of directors or the board of trustees of a family violence shelter center or sexual assault program, regardless of whether the board member complies with Section 552.024.

Gov't Code § 552.138(a), (b)(6). Section 552.138 applies only to information maintained by a family violence shelter center or sexual assault program. *See* House Comm. on State Affairs, Bill Analysis, Tex. S.B. 15, 77th Leg., R.S. (2001) (Engrossed version) ("Senate Bill 15 amends the Government Code to except family violence shelter centers (center) and sexual assault programs (program) from disclosing certain public information."). Here, the submitted information is maintained by the district, and we have no indication that the district is a family violence shelter center or sexual assault program as defined in subsections 552.138(a)(1) and (2). Further, Planned Parenthood has not established that it is a family violence shelter center or sexual assault program as defined in subsections 552.138(a)(1) and (2). Finally, by its terms, section 552.138(b)(6) applies only to a home address or home telephone number of a board member. *See Id.* § 552.138(b)(6). Section 552.138(b)(6) does not apply to e-mail addresses. Accordingly, the district may not withhold any of the e-mail addresses at issue under section 552.138.

In summary, the district must withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy, as well as the information

we have marked under the "special circumstances" aspect of common-law privacy. The remaining information must be released to the requestor.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 334878

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)