



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2009

Mr. Craig Watkins
Criminal District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2009-13358

Dear Mr. Watkins:

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# 355939.

Dallas County (the "county") received a request for the bar number, correct spelling, and forwarding address for a named individual. You claim a portion of the requested information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1176 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we address the county's argument that a portion of the request requires the county to answer questions. We agree that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a

¹ 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.

request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain responsive information that is not in its possession, so long as no other individual or entity holds such information on behalf of the governmental body that received the request for information. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the county has made a good faith effort to do so.

Next, we address your argument that the individual's bar number is not subject to the Act. The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is instead "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). You state that the individual's bar number relates to information maintained by the State Bar of Texas as an administrative agency of the judicial department. However, we note this information is maintained by the county for administrative purposes. Thus, we conclude the county is maintaining this information for its own purposes and in connection with its official business. Further, because the county maintains this information as the employer of the individual at issue, you have not demonstrated that you are maintaining the information on behalf of the judiciary. Therefore, we conclude the information is subject to the Act and must be released unless it falls within an exception to public disclosure. We now turn to your remaining arguments against disclosure of the submitted information.

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. Section 552.101 encompasses the doctrine of common-law privacy. 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. We note that an employee's name, address, and bar number are not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy). Upon review, we find that none of the submitted information is highly intimate or embarrassing. Therefore, the county may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) excepts from public disclosure the home address, home telephone number, cellular telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You state the employee at issue timely elected confidentiality. Accordingly, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, none of the remaining information constitutes the home address or telephone number, social security number, or family member information of the employee at issue; therefore, the county may not withhold any of the remaining information under section 552.117.

You next claim the bar number is excepted from disclosure under section 552.1176 of the Government Code. Section 552.1176 excepts from disclosure

(a) Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.

Gov't Code § 552.1176. Section 552.1176 only applies to information maintained under Chapter 81 of the Government Code. Chapter 81 pertains to the duties and obligations of the State Bar of Texas. *See generally id.* §§ 81.001–81.123. Accordingly, section 552.1176 only applies to records maintained by the State Bar of Texas. In this instance the information at issue is maintained by the county. We further note section 552.1176 only applies to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law. Thus, this section does not apply to bar numbers. *See* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory

structure). Accordingly, section 552.1176 is not applicable to this information, and it may not be withheld on this basis.

In summary, the county must withhold the information we marked under section 552.117. The remaining requested information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 355939

Enc. Submitted documents

cc: Requestor
(w/o enclosures)