



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2009

Ms. Christine Badillo
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2009-15876

Dear Ms. Badillo:

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# 360729.

The Bastrop Independent School District (the "district"), which you represent, received a request for all information relating to the selection process for a specified job posting as it pertains to the requestor's client.¹ You state the district has released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.135, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by interested third parties. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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. *See id.* at 681-82. 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. *See* 540 S.W.2d at 683. We note, however, that generally the public has a legitimate interest in information that relates to public employment and public

¹You inform us the requestor clarified his request. *See* Gov't Code § 522.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). You contend that some or all of the submitted information is confidential on the basis of common-law privacy. Upon review, however, we find that none of the information is intimate or embarrassing and of no legitimate public interest. Therefore, the district may not withhold any portion of the submitted information on this basis.

Section 552.135 of the Government Code provides the following:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Section 552.135 protects an informer's identity, but does not encompass protection for witness information or statements. You state that the individual whose identifying information you have marked reported a violation of state law to the district and is an informer as that term is defined by section 552.135. You do not indicate that any of the exceptions in subsection 552.135(c) apply. Based on your representations and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code. However, we find that none of the remaining information the district has marked is identifying for the purpose of section 552.135 and it may not be withheld on this basis.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). You have marked e-mail addresses under section 552.137. The e-mail addresses you have marked are not a type specifically excluded by section 552.137(c). Thus, unless the district receives consent for their release, the marked e-mail addresses must be withheld under section 552.137 of the Government Code. *See id.* § 552.137(b).

In summary, the district must withhold the information we have marked under section 552.135 of the Government Code. The district must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 360729

Enc. Submitted documents

c: Requestor
(w/o enclosures)