ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

Ms. Kathleen Cline
Director of Operations
Bexar County CSCD
601 Dolorosa
San Antonio, Texas 78207-4588

OR2009-16375

Dear Ms. Cline:

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# 361804.

The Bexar County Community Supervision and Corrections Department (the "department") received two requests from different requestors for copies of any grievances or complaints filed against each respective requestor after a specified date. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.[1] We have considered the exception you claim and reviewed 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, which 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 met. *Id.* at 681-82. The type of information considered intimate and

[1]Although you also appear to raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

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. *Id.* at 683.

You assert the submitted information involves a claim of sexual harassment and must be withheld under section 552.101 in conjunction with common-law privacy. *See Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate and embarrassing information and public did not have a legitimate interest in such information). We note, however, the department did not conduct a sexual harassment investigation in this instance. Further, the department did not receive a sexual harassment complaint against the department. The submitted information pertains to a complaint of discrimination based on race and gender. Upon review, however, we find a portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. The department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing information, the release of which would be highly objectionable to a reasonable person. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy). Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

We note a portion of the remaining information may be excepted from disclosure under section 552.117 of the Government Code.[2] Section 552.117(a)(6) excepts from disclosure the home address and telephone number, social security number, and family member information of an officer or employee of a community supervision and corrections department established under chapter 76 of the Government Code who performs a duty described by section 76.004(b) of the Government Code, regardless of whether the officer or employee complies with sections 552.024 or 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(6). We have marked personal information that may be protected by section 552.117(a)(6). You do not inform us whether the individual whose information is at issue performs a duty described by section 76.004(b) of the Government Code. To the

[2]The 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).

extent the information we have marked relates to an individual who performs a duty described by section 76.004(b), the department must withhold the marked information under section 552.117(a)(6). Otherwise, the information may not be withheld under this section. If the personal information we have marked is not subject to section 552.117(a)(6) of the Government Code, it may be excepted 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. *Id.* § 552.117(a)(1). 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 department may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. You do not inform us, nor can we determine from the submitted information, whether the individual at issue elected to keep her personal information confidential pursuant to section 552.024 of the Government Code prior to the department receiving the present request. Thus, if the individual at issue made a timely election under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1). If the individual did not make a timely election under section 552.024, the marked information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the personal information we marked relates to an individual who performs a duty described by section 76.004(b) of the Government Code, the department must withhold that marked information under section 552.117(a)(6) of the Government Code. Otherwise, to the extent the individual at issue timely elected confidentiality for her information under section 552.024, the department must withhold that information under section 552.117(a)(1). As no further exception to disclosure has been raised, 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,

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 361804

Enc. Submitted documents

c: Requestors
(w/o enclosures)