



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2012

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

OR2012-02322

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# 445295.

The Dripping Springs Independent School District (the “district”), which you represent, received a request for information involving (1) the requestor, (2) the district’s transportation department, or (3) any change, modification, or withdrawal of a named official’s severance agreement. You indicate some of the requested information either has been or will be released. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note the district did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general’s decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us the district received the present request for information on November 10, 2011 and was closed from November 23 through November 25; therefore, the district's ten-business-day deadline under section 552.301(b) was November 29. You requested this decision by United States mail meter-marked December 6. *See* Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the district did not comply with section 552.301(b) in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your arguments.

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 exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You contend the submitted information should be withheld in its entirety on privacy grounds. Having considered your arguments, we note the requestor would have a right of access under section 552.023 of the Government Code to any submitted information concerning himself that the district would be required to withhold from the public to protect his privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).¹ We also note the submitted information involves current or former employees of the district, including the requestor, and a law enforcement officer employed by another governmental body. As this office has explained on many occasions, information involving public officials and employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987)

¹Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

(fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Having reviewed the information at issue, we conclude portions of the information, which we have marked, are highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. We conclude the remaining information at issue is not highly intimate or embarrassing and a matter of no legitimate public interest and may not be withheld on privacy grounds under section 552.101.

We note the district may be required to withhold some of the remaining information under sections 552.117, 552.1175, and 552.137 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Section 552.117(a)(1) encompasses an official's or employee's personal cellular telephone or pager number if the official or employee pays for the telephone or pager service with his or her personal funds. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). 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). 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 confidentiality under section 552.024. Therefore, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code to the extent the former employee of the district to whom the information pertains timely requested confidentiality for the marked information under section 552.024 of the Government Code, including the cellular telephone number if the employee personally paid for the cellular service.

To the extent the information we have marked under section 552.117 of the Government Code is not protected by that exception, the district may be required to withhold the marked

²This office will raise sections 552.117, 552.1175, and 552.137 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

information, along with other information we have marked, under section 552.1175 of the Government Code. Section 552.1175 protects information related to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a)(1). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). Section 552.1175(b) also encompasses an individual's personal cellular telephone or pager number if the individual falls within the scope of section 552.1175(a) and pays for the cellular telephone or pager service with his or her personal funds. The district must withhold the information we have marked under sections 552.117 and 552.1175 of the Government Code to the extent the information pertains to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, who chooses to restrict public access to the marked information in accordance with section 552.1175(b).

Section 552.137 of the Government Code states that "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 under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners have affirmatively consented to the public disclosure of their e-mail addresses.³

In summary, the district must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.117(a)(1) of the Government Code to the extent the former employee to whom the information pertains timely requested

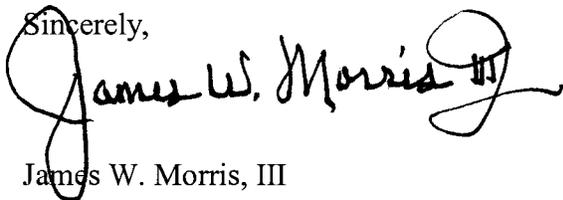
³We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.107(1) of the Government Code.

confidentiality for the marked information under section 552.024 of the Government Code, including the employee's cellular telephone number if he personally pays for the cellular service; (3) the information we have marked under sections 552.117 and 552.1175 of the Government Code to the extent the information pertains to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, who chooses to restrict public access to the marked information in accordance with section 552.1175(b); and (4) the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners have affirmatively consented to the public disclosure of their e-mail addresses. The rest of the submitted 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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 445295

Enc: Submitted documents

c: Requestor
(w/o enclosures)