



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2012

Mr. Robert N. Bland, IV
District Attorney
Ector County
300 North Grant, Room 305
Odessa, Texas 79761

OR2012-03541

Dear Mr. Bland:

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# 447307.

The Ector County District Attorney's Office (the "district attorney's office") received a request for all e-mails during a specified time period sent to or from a named individual's Ector County e-mail address, as well as all e-mails pertaining to county business sent to or from the named individual's personal e-mail address during the specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.109, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information pertaining only to the named individual's county e-mail address. To the extent responsive information pertaining to the named individual's personal e-mail address existed on the date the district attorney's office received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find portions of the submitted information pertain to investigations of alleged or suspected child abuse or neglect; therefore the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). As you do not indicate that the district attorney’s office has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine the information we have indicated is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district attorney’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 established. *Id.* at 681-82. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical

handicaps) and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find portions of the remaining information are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the district attorney's office must withhold the information we have indicated under section 552.101 in conjunction with common-law privacy.¹

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (4). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), (4), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state some of the remaining information was prepared by attorneys representing the state in anticipation of, or in the course of preparation for, criminal litigation, and the information reflects the mental impressions and legal reasoning of those attorneys. Accordingly, based on your representations and our review, we conclude portions of the remaining information, which we have indicated, are subject to section 552.108(a)(4) of the Government Code. However, upon review, we find that none of the remaining information was prepared by an attorney representing the state or reflects the mental impressions or legal reasoning of an attorney representing the state. Accordingly, the district attorney's office may not withhold any of the remaining information under section 552.108(a)(4) of the Government Code.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

You generally assert some of the remaining information “involve[s] discussion with other law enforcement agencies regarding ongoing or pending case with the [district attorney’s office].” The remaining information, however, pertains to purely administrative and personnel matters, to cases in which the criminal defendant entered a plea with the court, or does not reflect discussion with other law enforcement agencies. You have not explained, or otherwise demonstrated, how release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, we find the district attorney’s office has failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information. Consequently, the district attorney’s office may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.109 of the Government Code excepts from public disclosure “[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” Gov’t Code § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the doctrine of common-law privacy test previously addressed. You generally assert some of the remaining information is excepted under section 552.109. However, you have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing correspondence or communications of an elected office holder. Consequently, the district attorney’s office may not withhold any part of the remaining information under section 552.109 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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. *Id.* § 552.117(a). We further note section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district attorney’s office may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. A portion of the remaining information constitutes information subject to section 552.117(a)(1). You have not informed us whether the employees whose information is at issue timely chose to not allow public access to their personal information. Therefore, if the employees timely requested confidentiality for their personal information, the district attorney’s office must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employees did not timely request confidentiality, the district attorney’s office may not withhold the information we have

marked under section 552.117(a)(1) of the Government Code. The submitted information also contains the cellular telephone number of one of the employees whose information is at issue. To the extent this is a personal cellular telephone number for which service is not paid by the district attorney's office, the district attorney's office must withhold this number under section 552.117(a)(1). However, the district attorney's office may not withhold the number if the district attorney's office pays for the cellular telephone service.

We note the remaining information includes e-mail addresses belonging to members of the public. Section 552.137 of the Government Code 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). The e-mail addresses at issue, which we have marked, are not specifically excluded by section 552.137(c). As such, the district attorney's office must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.² *See id.* § 552.137(b).

In summary, the district attorney's office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district attorney's office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office may withhold the information we have indicated under section 552.108(a)(4) of the Government Code. To the extent the employees whose information is at issue timely-elected confidentiality under section 552.024 of the Government Code, the district attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the cellular telephone number, if it is paid for with personal funds. The district attorney's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners affirmatively consent to their release. The district attorney's office must release the remaining information.

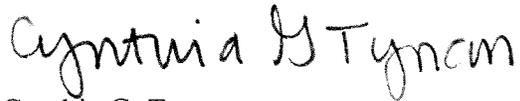
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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 "Cynthia G. Tynan". The signature is written in a cursive style with a large, prominent initial "C".

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 447307

Enc. Submitted documents

c: Requestor
(w/o enclosures)