



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Mr. Matthew R. Beatty
Counsel for Agua Special Utility District
Beatty Bangle Strama, P.C.
400 West 15th Street, Suite 1450
Austin, Texas 78701

OR2015-14419

Dear Mr. Beatty:

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# 571566.

The Agua Special Utility District (the "district"), which you represent, received a request for all applications submitted in response to two advertised employment positions. You claim the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.117, and 552.147 of the Government Code. Further, you state release of some of this information may implicate the privacy interest of certain individuals. Accordingly, you state, and provide documentation showing, you notified the individuals at issue of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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

satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Although references to the previous salaries of an applicant for public employment may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the applicant's employment qualifications and background. *See* Open Records Decision No. 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question"). We therefore conclude the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

The district raises section 552.110 of the Government Code for the submitted information. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. We note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's arguments under section 552.110 of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, 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. Gov't Code § 552.117(a). 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). Further, we note section 552.117 applies only to records the governmental body is holding in an employment capacity. Upon review, we find the information the district seeks to withhold does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of individuals who were employees of the district at the time of the request. Therefore, we find section 552.117(a)(1) of the Government Code does not apply to the information at issue, and the district may not withhold any portion of the submitted information under section 552.117(a)(1) of the Government Code.

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).¹ *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

You assert some of the remaining information is excepted under section 552.147(a) of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Upon review, we find the district may withhold the social security numbers within the submitted information under section 552.147.

In summary, the district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district may withhold the social security numbers within the submitted information under section 552.147. The district 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke
Assistant Attorney General
Open Records Division

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¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 571566

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3rd Parties
(w/o enclosures)