



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Ms. Dylbia L. Jefferies Vega  
Civil Legal Division  
Cameron County Commissioners Court  
1100 East Monroe Street  
Brownsville, Texas 78520

OR2015-24197

Dear Ms. Vega:

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# 587701.

Cameron County (the "county") received a request for nine categories of information pertaining to the employment of a named individual, including information from the county's Formal Advisory Grievance Committee (the "committee").<sup>1</sup> You state you do not have information responsive to some categories of the request.<sup>2</sup> You state you have released some information. With respect to some of the submitted information, you claim the committee is not a governmental body that is subject to the Act. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.<sup>3</sup> Additionally, you state you have notified a third party of the request. See Gov't Code § 552.304 (interested third party may submit comments stating why

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<sup>1</sup>As you have not submitted the request for our review, we take our description from your brief to our office.

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>Although you do not raise section 552.101 of the Government Code in your brief, we understand you to assert this exception based on your arguments.

information should or should not be released). We have considered your arguments and reviewed the submitted information.

Initially, with respect to the information you have indicated, you assert the committee is not a governmental body that is subject to the Act. You state the committee was created by the terms of the county's Personnel Policies Manual and its members are appointed by the county's commissioners' court. You further explain the committee provides recommendations on grievances filed by county employees, "is merely advisory[,] and has no rule-making, decision-making, or judicial or quasi-judicial authority." We note the Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code, which includes several enumerated kinds of entities. *Id.* § 552.003(1)(A). Upon review, we find the committee was established by and is part of the commissioners' court, which is a governmental body. *See id.* § 552.003(1)(A)(ii). Thus, we conclude the information at issue is subject to public disclosure, unless it is confidential or excepted from disclosure under an exception to the Act.

Next, we must address the county's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state the county received the request for information on August 28, 2015. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We note September 7, 2015, was a holiday. Thus, the county's fifteen-day deadline was September 21, 2015. However, as of the date of this letter, we have not received a copy of the written request for information. Thus, you failed to submit a copy of the written request for information within the time period prescribed by section 552.301(e). Accordingly, we find the county failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise sections 552.103 and 552.107 of the Government Code, these

sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) and rule 503 may be waived), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, in failing to comply with section 552.301, the county has waived its argument under sections 552.103 and 552.107, and may not withhold the information on either of these bases. However, because sections 552.101 and 552.117 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.<sup>4</sup>

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 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Furthermore, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision 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), 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 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). Upon review, we find you have failed to demonstrate the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the county may not withhold the submitted information under section 552.101 on that basis.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and 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 that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone

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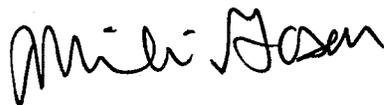
<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the county must withhold the information we have marked under section 552.117(a)(1), including the personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. The county may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 587701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)