



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2016

Ms. Yahitza Nuñez
Assistant Criminal District Attorney
Hays County
712 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2016-11617

Dear Ms. Nuñez:

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# 609052 (HCDA Ref. #16-0155).

The Hays County District Attorney's Office (the "district attorney's office") received a request for all e-mails from a named judge during a specified time period. You claim the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request. The requestor seeks e-mails received by the district attorney's office from a named judge. Portions of the submitted information, which we marked, consists of e-mails from the named judge, but not to the district attorney's office. This ruling does not address the public availability of the non-responsive information, and the district attorney's office need not release it in response to the request.

We now address your argument the responsive information is not subject to the provisions of the Act because it consists of records of the judiciary. The Act generally requires the public disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.002(a)(1). While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules

adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). You state the e-mails at issue were written, produced, collected, assembled, or maintained by the named judge who is a part of the judiciary. However, as noted above, the requestor seeks from the district attorney’s office e-mails received from the named judge. Thus the responsive information is maintained by the district attorney’s office in the transaction of official business for the district attorney’s office. *See* Gov’t Code § 552.002. Because this information is maintained by the district attorney’s office in connection with the transaction of its official business, it does not constitute records of the judiciary. Therefore, the responsive information is subject to the Act and may only be withheld if it is excepted from disclosure under an exception in the Act.

We note portions of the responsive information are subject to sections 552.101, 552.117, and 552.137 of the Government Code.¹ 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). We note section 552.117 is also applicable to

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

personal cellular telephone numbers, 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 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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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 employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the governmental body does not pay for the cellular telephone service, the district attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024 or the governmental body pays for the cellular telephone service, the district attorney's office may not withhold the marked information under section 552.117(a)(1).

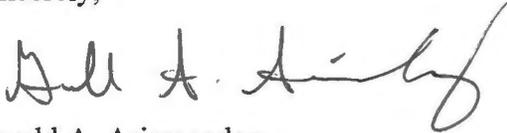
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district attorney's office 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.

In summary, the district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue timely requested 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; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The district attorney's office 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 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, 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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with a prominent loop at the end of the last name.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 609052

Enc. Submitted documents

c: Requestor
(w/o enclosures)