



May 26, 2017

Mr. David Feldman
Attorney Pro Tem for the Collin County District Attorney's Office
Feldman & Feldman
3355 West Alabama Street, Suite 1220
Houston, Texas 77098

OR2017-11523

Dear Mr. Feldman:

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# 659565.

The Collin County District Attorney's Office (the "district attorney's office"), which your clients represent as Attorneys Pro Tem, received a request for (1) all communications between three named individuals appointed as District Attorneys Pro Tem (the "attorneys"), including their staff, and any news media outlets during a specified time period; and (2) written documentation demonstrating fulfillment of certain training requirements by the attorneys.¹ You state you will provide some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹We note the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. We note addresses and phone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find you have failed to demonstrate the information you seek to withhold is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district attorney's office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the district attorney's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.117(a)(1) 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.³ *See id.* § 552.117(a)(1). Section 552.117 is applicable to 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) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and 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

³The 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).

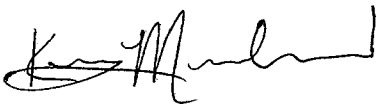
governmental body's receipt of the request for the information. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the district attorney's office must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code; however, this information may only be withheld if a governmental body does not pay for the cellular telephone service.

In summary, the district attorney's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. If the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the district attorney's office must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code; however, this information may only be withheld if a governmental body does not pay for the cellular telephone service. 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 659565

Enc. Submitted documents

c: Requestor
(w/o enclosures)