



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Ms. Julia Gannaway
Lynn, Pham & Ross, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2011-01594

Dear Ms. Gannaway:

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# 407664.

The City of Waxahachie (the "city"), which you represent, received a request for any "first report of injury" form filed by any of ten named officers during a specified time period. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.² Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*,

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

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 common-law right of 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You assert the information you have marked is confidential under section 552.101 in conjunction with common-law privacy. Upon review, we find the submitted information pertains to worker’s compensation claims that involve a financial transaction with a governmental body. Thus, there is a legitimate public interest in this information. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). An individual’s personal post office box number is not a “home address” and, therefore, may not be withheld under section 552.117. *See id.* § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. You state the information you have marked under section 552.117 belongs to peace officers. We note one of the marked addresses is a post office box number, which, as stated above, does not constitute a home address for purposes of section 552.117. Accordingly, with the exception of the marked post

office box number, the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

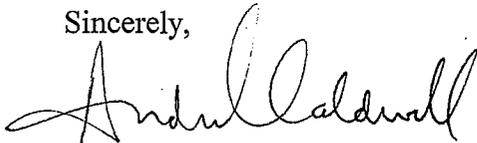
Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). We find the insurance policy numbers within the submitted information constitute access device numbers for purposes of section 552.136. Thus, the city must withhold the information we have marked under section 552.136 of the Government Code. However, we find you have failed to demonstrate how the remaining information constitutes access device numbers used to obtain money, goods, services, or another thing of value, or initiate a transfer of funds other than a transfer originated solely by paper instrument. We therefore conclude the city may not withhold any of the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.102(a) of the Government Code. With the exception of the marked post office box number, the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.136 of the Government Code. 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.oag.state.tx.us/open/index_orl.php, 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

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Enc. Submitted documents

c: Requestor
(w/o enclosures)