



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Mr. John R. Adamo
Director
Administrative Legal Services
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2013-03451

Dear Mr. Adamo:

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# 480422.

The Texas Department of Family and Protective Services (the "department") received a request for copies of all communications or documents from or by a specified person from July 1, 2012, to the present. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

In comments to this office, the requestor asserts the information the district has submitted as responsive to the instant request was also responsive to a prior request for information the requestor made on September 25, 2012, for which the department did not seek a ruling from this office. Thus, we understand the requestor to assert the department failed to comply with the procedural requirements of section 552.301 of the Government Code because it did not timely seek a decision to withhold the information at issue in response to the requestor's previous request. The requestor has submitted a copy of his September 25, 2012, request for information with his comments. The September 25, 2012, request seeks information pertaining to a specified department employee including, among other items, "all incoming

and outgoing emails from August 1, 2011 to the present date.” The present request for information, received by the department on December 7, 2012, seeks communications and documents pertaining to the same specified department employee “during the period of July 1, 2012 to the present date.” We note that although the two requests, in part, seek information from the same time period, the information the department has submitted for our review consists of e-mails sent and received by the specified department employee from November 29, 2012 through December 7, 2012. Therefore, we find the information at issue did not exist at the time of the requestor’s September 25, 2012, request.¹ We therefore conclude the department did not violate section 552.301 of the Government Code with regard to the September 25, 2102, request.

Next, we address the department’s arguments for the submitted information. 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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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 also found 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). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold this information pursuant to section 552.101 in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld on this basis.

Section 552.117 of the Government Code 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Code.² Gov't Code § 552.117(a). Section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (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 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former 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 information we have marked in the remaining information must be withheld under section 552.117(a)(1); however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. However, the department may not withhold the marked information under section 552.117(a)(1) if the individuals did not make a timely election to keep the information confidential.

We note the requestor asserts he has a special right of access to the submitted information. Under section 552.023, a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Gov't Code § 552.023(a). In this instance, the information at issue pertains to neither the requestor or his client. Therefore, section 552.023 does not provide the requestor a special right of access to the information at issue.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The remaining information must be released.

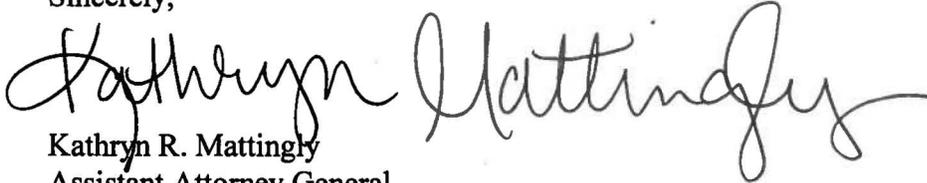
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²The 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).

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,

A handwritten signature in black ink, appearing to read "Kathryn R. Mattingly". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 480422

Enc. Submitted documents

c: Requestor
(w/o enclosures)