



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2014

Mr. Jonathan Miles  
Open Government Attorney  
Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2014-01423

Dear Mr. Miles:

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# 511749 (DFPS ORR No. 10252013MKG).

The Department of Family and Protective Services (the "department") received a request for a specified personnel file. You state you have released some information with redactions pursuant to sections 552.024 and 552.147 of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> We also understand you have redacted a social security number in the submitted information pursuant to section 552.147 of the Government Code. You claim some of the submitted information is excepted from disclosure under

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<sup>1</sup>Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117(a)(1) of the Government Code without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See* Gov't Code §§ 552.024(a)-(c), .117(a)(1). Section 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. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

sections 552.101, 552.102, and 552.117 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed 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. This section 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). 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.

This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD Nos. 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373.

Upon review, we find some of the information at issue contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we find you have failed

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<sup>2</sup>Although you do not raise sections 552.117 of the Government Code in your brief, we understand you to raise this exception based on your markings.

to demonstrate the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we conclude the department must withhold the information you have marked under section 552.102(a).

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). 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 individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the information you have marked and the additional information we have marked must be withheld under section 552.117(a)(1). The department may not withhold this information under section 552.117 if the individual at issue did not make a timely election to keep the information confidential.

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. The department must withhold the information you have marked under section 552.102(a) of the Government Code. If the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code. The department 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](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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 511749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)