



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2014

Ms. Diana Spiller  
Research Specialist/Public Information Coordinator  
Texas Commission on Jail Standards  
P.O. Box 12985  
Austin, Texas 78711

OR2014-06281

Dear Ms. Spiller:

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# 519949.

The Texas Commission on Jail Standards (the "commission") received a request for nineteen separate categories of information, including information regarding the death of a named individual, documents regarding the Bowie County Jail, and all investigations of incidents occurring at the Bowie County Jail for the year 2012. You state you have released most of the information to the requestor. You indicate the commission will redact personal e-mail addresses subject to section 552.137 of the Government Code.<sup>1</sup> You claim portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be

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<sup>1</sup>Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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. *See id.* at 681-82. The 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 you have marked, as well as the additional information we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information you have marked, as well as the additional information we have 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 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.<sup>2</sup> Gov't Code § 552.117(a)(1). Section 552.117 is also 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 piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) 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 information was made. Accordingly, the commission must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The commission may not withhold this information if the individual whose information is at issue did not make a timely election to keep the information confidential or the cellular telephone service is paid for by a governmental body.

In summary, the commission must withhold the information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the

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<sup>2</sup>The 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).

cellular telephone service is not paid for by a governmental body, the commission must withhold the cellular telephone number we marked under section 552.117(a)(1) 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.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,

A handwritten signature in black ink, appearing to read 'JB IV', with a long horizontal line extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/bhf

Ref: ID# 519949

Enc. Submitted documents

c: Requestor  
(w/o enclosures)