



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2014

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

OR2014-13827

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# 532127 (DFPS Ref. No. 05212014UUF).

The Texas Department of Family and Protective Services (the "department ") received a request for the personnel records of a named department employee. You state you will redact some information under Open Records Decision No. 684 (2009).<sup>1</sup> You further state you will redact information under sections 552.130(c) and 552.136(c) of the Government Code.<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information including I-9 forms under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, and personal e-mail addresses under section 552.137 of the Government Code without requesting an attorney general decision.

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>3</sup>We 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.

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 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. *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. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefit programs, among others, protected under common-law privacy). Upon review, we find the information you marked, and the additional information we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you marked, and the information we marked, under section 552.101 of the Government Code 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 marked under section 552.102(a).

You state you will redact the information you marked under section 552.117(a)(1) pursuant to section 552.024.<sup>4</sup> Section 552.117(a)(1) 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). We note section 552.117(a)(1) encompasses a personal cellular telephone number as long as the cellular 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 numbers for cellular mobile phones installed in county officials’ and employees’ private vehicles and intended for official business). Whether a

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<sup>4</sup>Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information, but it must notify the requestor. *See* Gov’t Code § 552.024(c). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

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, the department may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note the information you marked to withhold contains the "eligibility county." This information does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information for section 552.117(a)(1) purposes. Thus, if the individual whose information is at issue timely elected to keep her personal information confidential pursuant to section 552.024, the department must only withhold the information we marked under section 552.117(a)(1); however, the department may only withhold the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body.

In summary, the department must withhold the information you marked, and the information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked under section 552.102(a). If the individual whose information is at issue timely elected to keep her personal information confidential pursuant to section 552.024, the department must only withhold the information we marked under section 552.117(a)(1); however, the department may only withhold the personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. 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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 532127

Enc. Submitted documents

c: Requestor  
(w/o enclosures)