



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2014

Ms. Maureen Franz
Deputy Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2014-19443

Dear Ms. Franz:

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# 541678.

The Texas Health and Human Services Commission (the "commission") received a request for a list of accident history reports for the vehicle fleet of the Texas Department of Aging and Disability Services over a specified time period and the costs incurred from these accidents. You state you have released some information. 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.

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 demonstrated. *See 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). Additionally, this office has

found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 600 (1992) (personal financial information includes choice of a particular insurance carrier). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.117 of the Government Code.¹ 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). Section 552.117 is 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 it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117 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. Accordingly, to the extent the individuals whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the commission may not withhold the marked information under section 552.117(a)(1).

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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 id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See*

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Open Records Decision No. 684 at 9 (2009). Upon review, the commission must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body, to the extent the current or former commission employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. The commission must withhold the insurance policy number 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 541678

Enc. Submitted documents

c: Requestor
(w/o enclosures)