



January 7, 2015

Ms. Annalisa Davila  
Deputy Director  
West Texas Community Supervision and Corrections Department  
800 East Overland, Suite 100  
El Paso, Texas 79901

OR2015-00250

Dear Ms. Davila:

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# 549120.

The West Texas Community Supervision and Corrections Department (the "department") received a request for all complaints, investigations, reports, emails, or other documents sent to or by any of ten named individuals, referring to an inappropriate relationship between two named individuals.<sup>1</sup> The department states it has released some information. The department claims the submitted information is not subject to the Act. Alternatively, the department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

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<sup>1</sup>You state the department received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Although you cite to "section 551.101" of the Government Code, we understand you to claim section 552.101 of the Government Code.

You argue the requested information constitutes judicial records not subject to the Act. The Act applies only to information that is “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by a governmental body. Gov’t Code § 552.002(a)(1). The Act generally requires the disclosure of information maintained by a governmental body. *Id.* A governmental body under the Act “does not include the judiciary.” *Id.* § 552.003(1)(B). However, in Open Records Decision No. 646 (1996), this office determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records such as personnel files and other records reflecting the day-to-day management of the department are subject to the Act. ORD 646 at 5; *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). In contrast, specific records held by a community supervision and corrections department that concern individuals who are on probation and subject to the direct supervision of a court are not subject to the Act, because such records are held on behalf of the judiciary. ORD 646 at 5.

In this instance, you state the requested information constitutes specific records held by the department that concern an individual who was on probation and was subject to the direct supervision of a court. Upon review, we find the information we marked consists of records of the judiciary that are not subject to the Act and need not be released in response to the instant request. However, the remaining information relates to an administrative investigation into the conduct of an employee of the department. Accordingly, we find this information is subject to the Act, and we will consider your claimed exception for this information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 76.006(g) of the Government Code provides that “[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential.” *Id.* § 76.006(g). The term “department” in this section “means a community supervision and corrections department established under [chapter 76 of the Government Code].” *Id.* § 76.001(4). Upon review, we find that none of the information at issue evaluates the performance of an officer of the department for purposes of section 76.006(g). Thus, no portion of this information may be withheld under section 552.101 in conjunction with section 76.006(g).

Section 552.101 also encompasses the doctrine of 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. *Id.* at 681-82. 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). However, this office has also noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.,* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld on the basis of common-law privacy.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.<sup>3</sup> *See* Gov't Code §§ 552.117(a)(1), .024. We note section 552.117 is also applicable to personal 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the department may only withhold the cellular telephone numbers we have marked if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the individuals at

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<sup>3</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).

issue did not timely request confidentiality under section 552.024, the department may not withhold the information we have marked under section 552.117(a)(1).

In summary, the department need not release the information we have marked as not subject to the Act. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the department may only withhold the cellular telephone numbers we have marked 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# 549120

Enc. Submitted documents

c: Requestor  
(w/o enclosures)