



January 20, 2015

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

OR2015-00995

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# 550542 (DFPS Ref. No. 10242014BCY).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a named employee. You state the department will redact certain information under section 552.117 of the Government Code as permitted by section 552.024 of the Government Code, Open Records Decision No. 684 (2009), and the previous determination issued in Open Records Letter No. 2003-5590 (2003).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101

¹Section 552.024 of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code without requesting a decision from this office if the individual whose information is at issue timely elected to keep that information confidential. *See* Gov't Code § 552.024(c). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office. Open Records Letter No. 2003-5590 is a previous determination authorizing the department to withhold, without the necessity of seeking a decision from this office, the records concerning an investigation of an allegation of abuse or neglect of a child and the records used or developed in providing services as a result of such an investigation under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, unless the department's rules permit the department to release requested records to a particular requestor.

and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4, 444 at 5-6 (1986), 432 at 2 (1984). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you 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 has 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 find the department must withhold the date of birth you marked under section 552.102(a) of the Government Code.

²We 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.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the date of birth you marked under section 552.102(a) 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, 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 'Kenny Moreland', written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 550542

Enc. Submitted documents

c: Requestor
(w/o enclosures)