



February 11, 2015

Ms. Jessica L. Marsh
General Counsel
Office of Violent Sex Offender Management
Mail Code 4300
P.O. Box 149347
Austin, Texas 78714-9347

OR2015-02708

Dear Ms. Marsh:

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# 553287 (Public Information Act Request 2014-0025).

The Office of Violent Sex Offender Management (the "office") received a request for six categories of information pertaining to individuals civilly committed as sexually violent predators and the personnel file of a named employee.¹ The office states it has withheld social security numbers under section 552.147(b) of the Government Code and certain information as permitted by Open Records Decision No. 684 (2009).² The office also states it has released some of the requested information but does not have information responsive to one of the requested categories of information.³ You claim some of the remaining

¹We note the office asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad 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).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, without the necessity of requesting an attorney general decision.

³We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

requested information is excepted from disclosure under sections 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁵ 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 that 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 benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁶

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, 348 (Tex. 2010). Upon review, we find the office

⁴We 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 that those records contain substantially different types of information than that submitted to this office.

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁶As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a); Open Records Decision No. 622 (1994). Whether a 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). 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. The submitted information reflects the employee at issue timely elected to keep his information confidential pursuant to section 552.024. Accordingly, the office must withhold the information you have marked and the information we have marked under section 552.117(a)(1) of the Government Code.⁷

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

⁷As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

Id. § 552.136. You state the information you have marked is “used in conjunction with a proper password or other electronic information” for processing payment vouchers, initiation payment, requesting payment of overtime hours, utilizing paid leave or other similar services. Upon review, we find some of the information at issue consists of an access device number. Accordingly, the office must withhold the information we have marked under section 552.136 of the Government Code. However, we find you have not demonstrated how the remaining information you marked consists of access device numbers for purposes of section 552.136. Accordingly, the office may not withhold the remaining information you marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the office must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Id. § 552.139(a). Section 2059.055 of the Government Code provides in part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). We understand the remaining information contains a username and password that can be used to securely access office software program systems. Accordingly,

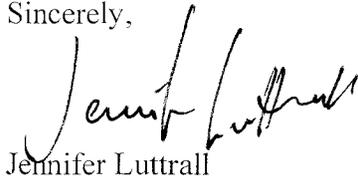
the office must withhold the marked username and password under section 552.139(a) of the Government Code.

In summary, the office must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information you have marked under section 552.102(a) of the Government Code; (3) the information you have marked and the information we have marked under section 552.117(a)(1) of the Government Code; (4) the information you have marked under section 552.130 of the Government Code; (5) the information we have marked under section 552.136 of the Government Code; (6) the e-mail address you marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure; and (7) the marked username and password under section 552.139(a) 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 553287

Enc. Submitted documents

c: Requestor
(w/o enclosures)