



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2015

Ms. Josephine Ramirez-Solis
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Closner, Room 303
Edinburg, Texas 78539

OR2015-12127

Dear Ms. Ramirez-Solis:

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# 570604 (HCDA File No. 2015-0032-DA).

The Hidalgo County District Attorney's Office (the "district attorney's office") received a request for all documents relating to the employment of four named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district attorney's office sought clarification of the request for information. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify 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 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). You further state the district attorney's office has not received a response to the request for clarification. Thus, we find the district attorney's office is not required to release information in response to the portion of the request for which it sought, but did not receive, clarification. However, if the requestor clarifies or

¹Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the district attorney's office holds in an employment capacity.

narrows this portion of the request for information, the district attorney's office must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387.

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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21, .33. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Open Records Decision No. 565 at 7* (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. We note, however, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked under chapter 411 constitutes confidential CHRI. Therefore, the district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.² However, we find the district attorney's office has failed to demonstrate how any portion of the remaining information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the district attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code 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*

²As our ruling is dispositive, we do not address your other argument to withhold this information.

No. 455 (1987). However, we note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office 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 and of no legitimate public interest. Therefore, the district attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

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[.]"³ 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). Accordingly, the district attorney's office must withhold the information we have marked under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (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). We also note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home).

³The 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).

⁴As our ruling is dispositive, we do not address your other argument to withhold this information.

Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the named individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. Accordingly, to the extent the named individuals are currently licensed peace officers as defined by article 2.12, the district attorney's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the district attorney's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the named individuals are not currently licensed police officers as defined by article 2.12, then the district attorney's office may not withhold information we have marked under section 552.117(a)(2) of the Government Code.

If the named individuals are not currently licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which 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). 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 district attorney's office may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have provided documentation showing three of the named individuals timely elected confidentiality under section 552.024. Therefore, the district attorney's office must withhold the information we have marked pertaining to these named individuals under section 552.117(a)(1) of the Government Code; however, the district attorney's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. To the extent the other named individual timely requested confidentiality under section 552.024 of the Government Code, the district attorney's office must withhold his information, which we have marked, under section 552.117(a)(1) of the Government Code. Conversely, if the other named individual did not timely request confidentiality under section 552.024, then the district attorney's office may not withhold his information under section 552.117(a)(1).

In summary, the district attorney's office must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have marked under section 552.102(a) of the Government Code; and (4) the motor vehicle record information we have marked under section 552.130 of the Government Code. In addition, to the extent the named individuals are currently licensed peace officers as defined by article 2.12, the district attorney's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the district attorney's office may not withhold the marked cellular telephone number if the cellular

telephone service is paid for by a governmental body. If the named individuals are not currently licensed peace officers, then the district attorney's office must withhold the information we have marked pertaining to the named individuals who timely elected confidentiality under section 552.117(a)(1) of the Government Code; however, the district attorney's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Additionally, to the extent the other named individual timely requested confidentiality under section 552.024 of the Government Code, the district attorney's office must withhold his information, which we have marked, under section 552.117(a)(1) 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 570604

Enc. Submitted documents

c: Requestor
(w/o enclosures)