



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2015

Ms. Jordan Hale
Public Information Coordinator
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2015-14268

Dear Ms. Hale:

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# 571824 (OOG # 15-172).

The Office of the Governor (the "governor's office") received a request for specified reimbursement records, office expenditures, daily schedules, outlook calendars, state vehicle and plane expenses and logs, state police and trooper usage records, private security expenses and reimbursements, personal financial disclosures, salary information, personnel records, gifts made to the governor's office, and letters of references submitted by Governor Perry during a specified period of time. You state the governor's office will release most of the requested information to the requestor. You claim a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

The governor's office states some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-15956 (2014), 2014-20625 (2014), and 2015-03880 (2015). In Open Records Letter Nos. 2014-15956 and 2014-20625, we determined the governor's office may withhold certain information under sections 552.104 and 552.107 of the Government Code, and must

¹We 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.

release the remaining information. In Open Records Letter No. 2015-03880, we determined the governor's office may withhold certain information under section 552.104 of the Government Code, and must release the remaining information. The governor's office states the law, facts, or circumstances on which the prior rulings were based have not changed. Accordingly, the governor's office may continue to rely on Open Records Letter Nos. 2014-15956, 2014-20625, and 2015-03880 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address your arguments against release of the submitted information not encompassed by Open Records Letter Nos. 2014-15956, 2014-20625, and 2015-03880.

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 found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to public). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial*

Foundation. Accordingly, the governor'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 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.

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 (Tex. 2010). Upon review, we find the governor's office must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

In summary, the governor's office may continue to rely on Open Records Letter Nos. 2014-15956, 2014-20625, and 2015-03880 as previous determinations and withhold or release the identical information in accordance with those rulings. The governor's office must withhold the information we have marked under sections 552.101 of the Government Code in conjunction with common-law privacy. The governor's office must withhold the date of birth you have marked under section 552.102(a) of the Government Code. The governor's office 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/dls

Ref: ID# 571824

Enc. Submitted documents

c: Requestor
(w/o enclosures)