



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

Ms. Lisa Calem-Lindström
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2015-20151

Dear Ms. Calem-Lindström:

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# 580665.

The Texas Facilities Commission (the "commission") received two requests from the same requestor for the personnel files of six named current and former commission employees. You state the commission has released some of the requested information. You argue some of the submitted information is not subject to the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you assert the submitted voice mail password, which you have marked, is not subject to the Act. You also note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number, which you have also marked. Section 552.002(a) defines "public information" as 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; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the

information; or by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body. Gov't Code. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office the voice mail password at issue is used solely as a tool to protect public property and has no other significance other than its use as a tool for the maintenance, manipulation, or protection of public information. Further, we understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on TCOLE's website. Based on your representations and our review, we find the password and TCOLE identification number at issue do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the password and TCOLE identification number at issue are not subject to the Act and the commission is not required to release them.

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 section 411.1391 of the Government Code, which governs the release of information maintained by the Department of Public Safety (the "department") concerning certain individuals. Section 411.1391 provides:

(a) The [commission] is entitled to obtain from the department criminal history record information ["CHRI"] maintained by the department that relates to a person who:

- (1) is an employee or an applicant for employment with the commission;
- (2) is a consultant, intern, or volunteer for the commission or an applicant to serve as a consultant, intern, or volunteer;
- (3) proposes to enter into a contract with or has a contract with the commission to perform services for or supply goods to the commission; or
- (4) is an employee or subcontractor, or an applicant to be an employee or subcontractor, of a contractor that provides services to the commission.

(b) [CHRI] obtained by the [commission] under Subsection (a) may not be released or disclosed to any person except:

- (1) on court order; or
- (2) with the consent of the person who is the subject of the [CHRI].

Id. § 411.1391; *see also id.* § 411.082(2) (defining CHRI for purposes of Gov't Code ch. 411 subch. F). You state the information you have marked consists of confidential CHRI. However, the information at issue appears to be self-reported criminal history information completed by an individual on his employment application. Thus, we find you have failed to demonstrate the information at issue consists of confidential CHRI the commission obtained from the department pursuant to section 411.1391(a) of the Government Code. Therefore, the commission may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 411.1391(b).

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 id.* § 552.130. Accordingly, except where we have marked for release, the commission must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code.¹ However, you have not demonstrated how any of the remaining information you marked consists of motor vehicle record information under section 552.130 of the Government Code, and the commission may not withhold any of the remaining information on that 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." *Id.* § 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 commission must withhold the employees' dates of birth you have marked and we 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 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. *See Gov't Code* § 552.117(a)(1). 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure for some of this information.

official use). Information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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 documentation reveals all of the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Accordingly, the commission must withhold the information you have marked and we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.

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 Gov't Code* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the commission must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

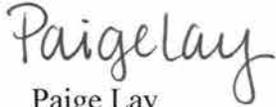
In summary, the password and TCOLE identification number at issue are not subject to the Act and the commission is not required to release them. The commission must withhold (1) the employees' dates of birth marked under section 552.102(a) of the Government Code; (2) the information marked under section 552.117(a)(1) of the Government Code, but may withhold the marked cellular telephone numbers only if a governmental body does not pay for the cellular telephone service; (3) the motor vehicle record information marked under section 552.130 of the Government Code; and (4) the personal e-mail addresses marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The commission must release the remaining information.

You also ask this office to issue a previous determination that would permit the commission to withhold the types of information that are at issue in this decision without the necessity of again requesting a decision by this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. 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 cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 580665

Enc. Submitted documents

c: Requestor
(w/o enclosures)