



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Ms. Laura Russell  
Attorney  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2015-25067

Dear Ms. Russell:

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# 588753 (TPWD #2015-09-R18).

The Texas Parks and Wildlife Department (the "department") received a request for a named person's personnel file and any internal affairs investigation in 2014 or 2015 involving said person. The department has released some information and claims the remainder is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Common-law privacy 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, e.g.*, Open Records Decision Nos. 545 (1990)

(common-law privacy protects 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). Upon review of the submitted information, we agree the department must withhold the information it marked under section 552.101 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). Accordingly, the department must withhold the date of birth it marked under section 552.102(a) of the Government Code.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which 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.<sup>1</sup> See Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a 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. Information may not be withheld under section 552.117(a)(1) if the former employee did not timely request the information be kept confidential. To the extent the former employee whose information we have marked timely elected confidentiality under section 552.024 of the Government Code, the department must withhold the information under section 552.117(a)(1). To the extent the former employee did not timely request confidentiality under section 552.024, the department may not withhold the information we have marked under section 552.117(a)(1).<sup>2</sup>

Section 552.130 of the Government Code provides information relating to a driver’s license issued by an agency of this state or another state or country is excepted from public release.

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<sup>1</sup>The 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).

<sup>2</sup>We note even if section 552.117(a)(1) is inapplicable, section 552.147(b) authorizes a governmental body to withhold a living person’s social security number without requesting a decision from this office. Gov’t Code § 552.147(b).

Gov't Code § 552.130(a). The department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold 1) the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy; 2) the date of birth it marked under section 552.102(a) of the Government Code; and 3) the driver's license information we marked under section 552.130 of the Government Code. To the extent the former employee whose information we have marked timely elected confidentiality under section 552.024 of the Government Code, the department must withhold the information under section 552.117(a)(1) 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](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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 588753

Enc. Marked documents

c: Requestor  
(w/o enclosures)