



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-00559

Dear Ms. Harden:

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# 593326 (PIR No. 15-42635).

The Office of the Attorney General (the "OAG") received a request for any records related to a named individual. You state you will release some information to the requestor. You state the OAG will redact information pursuant to sections 552.1175(f), 552.130(c), and 552.147(b) of the Government Code; information subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009); and certain information subject to section 552.139 of the Government Code in accordance with Open

Records Letter No. 2011-18124 (2011).¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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. This section encompasses information protected by other statutes. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). You raise section 552.101 in conjunction with part 603 of title 20 of the Code of Federal Regulations, which implements the Federal-State Unemployment Compensation Program, and pertains to the confidentiality and disclosure of information related to state unemployment compensation programs. 20 C.F.R. § 603.1 (providing purpose and scope of part 603). Section 1302(a) of title 42 of the United States Code authorizes the Secretary of Labor (the “secretary”) to promulgate rules and regulations necessary to the efficient administration of the functions with which the secretary is charged. *See* 42 U.S.C. § 1302(a). Section 603.4 of title 20 of the Code of Federal Regulations requires state unemployment compensation agencies, such as the Texas Workforce Commission (the “commission”), must protect the confidentiality of unemployment claim information which “reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include

¹Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, dates of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. *See* Gov’t Code § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. In Open Records Letter No. 2011-18124 this office issued the OAG a previous determination authorizing it to withhold an employee’s user ID under section 552.139 of the Government Code without the necessity of requesting a decision from this office.

²We 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.

provision for barring the disclosure of any such information[.]” 20 C.F.R. § 603.4(b). “Claim information” means information about whether an individual is receiving, has received, or has applied for unemployment compensation, as well as “[a]ny other information contained in the records of the State [unemployment compensation] agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.” 20 C.F.R. § 603.2(a)(1)(i), (2)(ii). Information in the commission’s files may be disclosed to a requesting agency or other specified parties under certain circumstances. *See* 20 C.F.R. §§ 603.5, .6, .21. Section 603.5(e) provides “[d]isclosure of confidential [unemployment compensation] information to a public official for use in the performance of his or her official duties is permissible.” *Id.* § 603.5(e). “Performance of official duties” means “administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official.” *Id.* Section 603.9 further states that for disclosures under section 603.5(e), the commission “must require the recipient to safeguard the information disclosed against unauthorized access or redisclosure . . . and must subject the recipient to penalties . . . for unauthorized disclosure[.]” and sets out the required safeguards. *Id.* § 603.9.

You state some of the information you have marked consists of confidential unemployment claim information provided to the OAG by the commission. You state the commission maintains this information as part of its administration of the state unemployment compensation program, and the commission has determined that releasing this information to the OAG is necessary for the administration or enforcement of laws under the OAG’s purview. *See id.* § 603.5(e). You further state the OAG has executed a confidentiality agreement with the commission with respect to this information. *See id.* § 603.9. We therefore conclude the OAG must withhold the claim information you have marked pursuant to section 552.101 of the Government Code in conjunction with these federal provisions.

Section 552.101 of the Government Code also 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. 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 E-1 or F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). 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. Upon review, we find the information you have marked under chapter 411 constitutes confidential CHRI. Therefore, the OAG must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.³ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the OAG must withhold public citizen's date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the OAG must withhold the claim information you have marked pursuant to section 552.101 of the Government Code in conjunction with federal law. The OAG must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The OAG must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The OAG must release the remaining information to this requestor.⁴

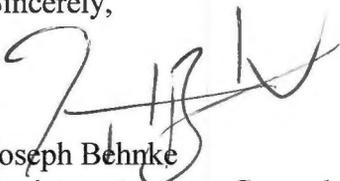
³Section 552.102(a) exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

⁴As you acknowledge, some of the information being released contains information to which the requestor has a right of access. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests): Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 593326

Enc. Submitted documents

c: Requestor
(w/o enclosures)