



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 28, 2016

Mr. Jonathan L. Almanza  
Assistant District Attorney  
Hidalgo County  
100 East Cano Street  
Edinburg, Texas 78539

OR2016-09630

Dear Mr. Almanza:

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# 612197 (Ref. No. 2016-0030-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for all records from any traffic collision involving a named individual during a specified time frame, all drug test records concerning the named individual during a specified time frame, and the personnel file of the named individual. You state the sheriff's office will release some responsive information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a CR-3 accident report. 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report).

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information held in an employment context.

An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § .065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the sheriff's office must withhold it under section 552.101 of the Government Code.<sup>2</sup> However, section 550.065(c-1) requires the sheriff's office to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident report. Thus, the sheriff's office must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. The information you seek to withhold consists of reports of the results of drug tests. Section 159.001 of the MPA defines a "patient" as "a person who, to receive medical care, consults with or is seen by a

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

physician.” *Id.* § 159.001(3). Because the individual at issue did not receive medical care in the administration of the drug tests, this individual is not a patient for purposes of section 159.002. Thus, we find you have not demonstrated any of the information at issue is confidential under the MPA. Therefore, the sheriff’s office may not withhold the any of the information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 412.0128 of the Labor Code, which provides that “[i]nformation in or derived from a workers’ compensation claim file regarding an employee . . . is confidential . . . and may not be disclosed by [the State Office of Risk Management (“SORM”)] except as provided by . . . this subchapter, or other law.” Labor Code § 412.0128. We note the language of section 412.0128 is substantially identical to section 402.083 of the Labor Code, which provides that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle or other law.” *Id.* § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, for purposes of section 402.083(a), information that was not obtained from the division may not be withheld on that basis. Based on this analysis, we find information in the possession of the sheriff’s office that was not obtained from SORM may not be withheld on the basis of section 412.0128. Further, this office has interpreted section 402.083 to protect only that “information in or derived from a claim file that explicitly or implicitly discloses the identity of employees who file workers’ compensation claims.” Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee’s name, beneficiary name, claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies a workers’ compensation claimant and is therefore confidential under section 402.083. Only in those cases where release of the employer’s identity would reveal the claimant’s identity may the identity of an employer be withheld. We will apply the same analysis in applying section 412.0128 to the information at issue.

We understand SORM administers the workers’ compensation insurance program for state employees. *See* Labor Code § 412.011(a), (b)(7). You state the information marked Exhibit D pertains to a worker’s compensation claim of a state employee. *See id.* § 501.001(5)(C)(i) (peace officers employed by a political subdivision and exercising authority granted under article 2.12 of the Code of Criminal Procedure are state employees for purposes of workers’ compensation insurance coverage). However, you do not state whether the information at issue was obtained by the sheriff’s office from SORM. Because we are unable to determine whether the information at issue was obtained from SORM, we must rule conditionally. To the extent the information at issue was obtained by the sheriff’s office from SORM, the sheriff’s office must withhold any information that explicitly or implicitly identifies a

workers' compensation claimant, including the claimant's date of injury, name, beneficiary name, claim number, social security number, home telephone number, home address, and date of birth, under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code. *Cf.* Labor Code § 402.083; ORD 619 at 10. However, if this information was not obtained by the sheriff's office from SORM, then the sheriff's office may not withhold this information under section 552.101 in conjunction with section 412.0128 of the Labor Code.

As previously noted, section 552.101 of the Government Code encompasses information other statutes make confidential. Section 101.104 of the Civil Practice and Remedies Code provides:

(a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].

(b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. You claim the information marked Exhibit E is confidential under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under Texas Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 “are not relevant to the availability of the information to the public”). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by Act); *see also* Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (*overruled in part by* Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges). Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the information at issue confidential for purposes of section 552.101 of the Government Code. Therefore, the sheriff's office may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 101.104 of the Civil Practice and Remedies Code.

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 sheriff's office must withhold the information we have marked under section 552.102(a) of the Government Code.

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. 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.<sup>3</sup> *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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

We understand you to assert the information marked Exhibit C is confidential under common-law privacy on the basis of Open Records Decision No. 594 (1991), in which this office concluded public employees may have a privacy interest in their drug test results. *See* ORD 594 (suggesting identification of individual as having tested positive for use of illegal drug may raise privacy issues), 455 at 5 (1987) (citing *Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d. 1136 (3rd Cir. 1986)). However, as this office has explained on many occasions, information involving public officials and employees and public employment is generally not private because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not

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<sup>3</sup>Section 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).

private). Although the information at issue may be highly intimate or embarrassing, the public has a legitimate interest in the information.

Upon review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff'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 sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.117(a)(2) of the Government Code exempts 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* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. However, we note an individual's personal post office box is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 662 at 6 (1994). Therefore, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, you have failed to demonstrate section 552.117 is applicable to any of the remaining information. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.117 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 sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Upon review, we find the sheriff's office must withhold the information we have marked under section 552.136 of the Government Code.

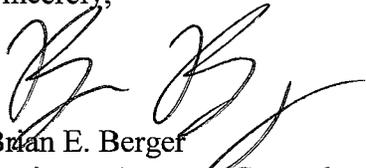
In summary, the sheriff's office must withhold the CR-3 accident report, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(c) of the Transportation Code, and release the redacted accident report pursuant to section 550.065(c-1). To the extent the information marked Exhibit D was obtained by the sheriff's office from SORM, the sheriff's office must withhold any

information that explicitly or implicitly identifies a workers' compensation claimant under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code. However, if this information was not obtained by the sheriff's office from SORM or does not implicitly or explicitly identify a claimant, then the sheriff's office may not withhold this information under section 552.101 in conjunction with section 412.0128. The sheriff's office must withhold the information we have marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.136 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](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# 612197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)