



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2016

Ms. Erin D. Thorn  
Assistant District Attorney  
Hidalgo County  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2016-12117

Dear Ms. Thorn:

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# 612649 (HC File No. 2016-0036-DA.CO).

Hidalgo County (the "county") received a request for the personnel files of six named employees. You state you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>While you raise section 552.107 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302. Additionally, although you claim section 552.1175 of the Government Code for portions of the submitted information, section 552.117 is the proper exception to raise in this instance as the county holds the submitted information in an employment capacity.

<sup>2</sup>We 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.

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number.<sup>3</sup> Section 552.002(a) of the Government Code 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:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) 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. 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 the TCOLE website. Accordingly, we find the officer's TCOLE identification number we marked in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number we marked is not subject to the Act and need not be released to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses federal law such as the Family and Medical Leave Act (the "FMLA"). *See* 29 U.S.C. §§ 2601 *et. seq.* Section 825.500 of chapter V of title 29

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<sup>3</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the [Americans with Disabilities Act (the "ADA")], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). We note a portion of the submitted documents, which we have marked, is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find none of the release provisions of the FMLA apply to this information. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA.<sup>4</sup>

Section 552.101 also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. 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.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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.

Occ. Code § 159.002(a)-(c). Information 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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find a portion of the remaining information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the county must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.<sup>5</sup> However, we find you have not demonstrated any portion of the remaining information consists of medical records for purposes of the MPA, and the county may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also encompasses section 412.0128 of the Labor Code, which provides “[i]nformation in or derived from a worker’s compensation claim file regarding an employee is confidential and may not be disclosed by the [State Office of Risk Management (the “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 “[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

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information in the possession of the county that was not obtained from the SORM may not be withheld on the basis of section 412.0128.

We understand the SORM administers the workers' compensation insurance program for state employees. However, you do not state any of the information at issue was obtained by the county from the SORM. Consequently, the county may not withhold any of the remaining information under section 552.101 in conjunction with section 412.0128 of the Labor Code.

Section 552.101 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to the 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, this office has concluded the public has a legitimate interest in information that relates to applicants and public employees and their qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). We further note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>6</sup> However, we find the county has not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Accordingly, the county must withhold the employees’ dates of birth we have marked under section 552.102(a) of the Government Code.<sup>7</sup> However, we find the county has not demonstrated any of the remaining information is subject to section 552.102(a) of the Government Code, and the county may not withhold any of the remaining information on that basis.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). The individuals at issue here are not professional public school employees. Consequently, the county may not withhold any of the remaining information under section 552.102(b) 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 id.* § 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 official use). 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 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. Information may not be

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<sup>7</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.<sup>8</sup> Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the county may not withhold the marked information under section 552.117(a)(1).<sup>9</sup> However, upon review, we find the county has not demonstrated any of the remaining information is subject to section 552.117(a)(1) of the Government Code, and the county may not withhold any of the remaining information on that basis.

Section 552.117(a)(2) of the Government Code excepts 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). As previously noted, 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* ORD 506 at 5-6. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.<sup>10</sup> However, upon review, we find the county has not demonstrated any of the remaining information is subject to section 552.117(a)(2) of the Government Code, and the county may not withhold any of the remaining information on that basis.

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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the

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<sup>8</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>9</sup>Regardless of the applicability of section 552.117 of the Government Code, we note 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* Gov't Code § 552.147(b).

<sup>10</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>11</sup> However, we find you have not demonstrated the remaining information consists of motor vehicle record information for purposes of section 552.130. Consequently, the county may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “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”). Accordingly, the county must withhold the bank account number we have marked under section 552.136 of the Government Code.<sup>12</sup> However, we find you have not demonstrated the remaining information consists of access device numbers for purposes of section 552.136. Consequently, the county may not withhold any of the remaining information under section 552.136 of the Government Code.

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 id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the county must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.<sup>13</sup> However, we find you have not demonstrated the remaining information consists of personal e-mail addresses for purposes of section 552.137. Consequently, the county may not withhold any of the remaining information under section 552.137 of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The county must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA, (2) the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, (3) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, (4) the employees’ dates of birth we have marked under section 552.102(a) of the Government Code, (5) the information we have marked under section 552.117(a)(2) of the Government Code, (6) the motor vehicle record information we have marked under section 552.130 of the Government Code, (7) the bank

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<sup>11</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>12</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>13</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

account number we have marked under section 552.136 of the Government Code, and (8) the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. Additionally, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. 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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 612649

Enc. Submitted documents

c: Requestor  
(w/o enclosures)