



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-13050

Dear Ms. Cohen:

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# 391883 (DPS No. 10-1424).

The Texas Department of Public Safety (the "department") received a request for the personnel file of a named individual. You state the department has made some of the requested information available to the requestor. You claim that the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the requestor specifically excluded social security numbers, driver's license numbers, and home addresses from her request. Thus, any social security numbers, driver's license numbers, or home addresses contained in the submitted documents are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request.

We understand you to claim that all of the responsive information is excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. 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 current or former official or 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. You inform us, and provide documentation showing, that the employee at issue timely elected confidentiality for certain categories of personal information under section 552.024. Upon review, we conclude the department must withhold the responsive information we have marked under section 552.117(a)(1) of the Government Code. However, the remaining responsive information is either not the type of information that is protected under section 552.117(a)(1) or is information for which the employee did not elect confidentiality under section 552.024. Accordingly, the department may not withhold the remaining responsive information under section 552.117(a)(1) of the Government Code.

We next note that a portion of the remaining responsive information is confidential pursuant to the doctrine of common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We note that this office has stated, in numerous decisions, that information pertaining to the work conduct, job performance, and qualifications of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (public employee's job performance does not generally constitute employee's private affairs), 455 (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we conclude that a portion of the remaining responsive information, which we have marked, is both intimate and embarrassing and of no legitimate public interest. Therefore, the department must

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note that some of the remaining responsive information is subject to section 552.130 of the Government Code, which excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [.]” Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the information we have marked in the remaining responsive information under section 552.130 of the Government Code.

Next, we note the remaining information contains information subject to section 552.136 of the Government Code, which states that “[n]otwithstanding 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”). Upon review, we find the department must withhold the information we have marked in the remaining information pursuant to section 552.136.

In summary, this ruling does not address the non-responsive information and it need not be released to the requestor. The department must withhold the information we have marked under section 552.117(a)(1) of the Government Code, section 552.101 of the Government Code in conjunction with common-law privacy, section 552.130 of the Government Code, and 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 391883

Enc. Submitted documents

c: Requestor
(w/o enclosures)