



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2011

Ms. H. Karen Fastenau
General Counsel
Texas Veterans Commission
P.O. Box 12277
Austin, Texas 78711-2277

OR2011-14170

Dear Ms. Fastenau:

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# 431617.

The Texas Veterans Commission (the "commission") received a request for a list of all employees and their unrestricted addresses and telephone numbers, work addresses, e-mail addresses, start date, type of position, date of birth or age, and salary. You state most of the requested information has been made available to the requestor. You claim the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) 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 recently 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find the information we have marked must be withheld under section 552.102(a) of the Government Code.

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 incorporates the doctrine of common-law privacy, which protects information that (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* included 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. However, this office has found that age is not a type of information excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 455 (1987), 373 (1983). We find you have not demonstrated how the listed ages are highly intimate or embarrassing and not of legitimate public concern. Thus, none of the listed ages may be withheld under section 552.101 in conjunction with common-law privacy.

We note a portion of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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 only be withheld under section 552.117(a)(1) 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. Therefore, to the extent the employees whose information we marked timely requested confidentiality for this information under section 552.024, the commission must withhold this information under section 552.117(a)(1). To the extent these employees did not so elect, the information we marked may not be withheld under section 552.117(a)(1).

In summary, the commission must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the employees whose information we marked timely requested confidentiality for this information under section 552.024, the commission must withhold this information under section 552.117(a)(1). The commission must release the remaining information.

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

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 431617

Enc. Submitted documents

c: Requestor
(w/o enclosures)