



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2012

Ms. Shanna S. Cargill  
Hayes, Berry, White & Vanzant, LLP  
P.O. Box 50149  
Denton, Texas 76206

OR2012-02737

Dear Ms. Cargill:

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# 446414.

The City of Celina (the "city"), which you represent, received a request for the personnel records of a named former city employee. You state the city will forward 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, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 made confidential by other statutes such as section 611.002 of the Health and Safety Code. Section 611.002(a) provides "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we agree the information we have marked consists of mental health records. Accordingly, the marked mental health records are confidential under section 611.002 of the Health and Safety Code and may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.<sup>2</sup>

You raise section 552.102 of the Government Code in conjunction with the doctrine of common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 Third 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 disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 342 (Tex. 2010). The court then 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. *Id.* at 346. Upon review, we find none of the remaining information is excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. We have marked information pertaining to the named former employee. To the extent the named former employee to whom the marked information pertains is a currently licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(2) 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 of a governmental body who requests this information be kept confidential under section 552.024. *See id.* § 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 only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request

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<sup>2</sup>As our ruling for this information is dispositive, we do not address your remaining arguments against the disclosure of portions of this information.

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 withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the named former employee, if he is not currently a licensed peace officer, and the other employee whose information is at issue timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). Conversely, to the extent these individuals did not make timely elections under section 552.024, the city may not withhold the marked information under section 552.117(a)(1) of the Government Code.

In summary, the city may only release the marked mental health record in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. If the named former employee is currently a licensed peace officer, the city must withhold the information pertaining to the former employee we have marked under section 552.117(a)(2) of the Government Code. If the named former employee is no longer a licensed peace officer, then to the extent he timely elected confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked pertaining to him under section 552.117(a)(1) of the Government Code. To the extent the other individual whose information is at issue timely elected confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked pertaining to that individual under section 552.117(a)(1) 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 446414

Enc. Submitted documents

c: Requestor  
(w/o enclosures)