



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2012

Ms. Amy L. Currier  
Public Information Officer  
Texas Funeral Service Commission  
P.O. Box 12217  
Austin, Texas 78711

OR2012-06639

Dear Ms. Currier:

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# 452671.

The Texas Funeral Service Commission (the "commission") received a request for information pertaining to a named individual, including information "that show[s] any disciplinary action against him, including but not limited to his license being suspended or removed." You state you are releasing some information to the requestor. You further state you will redact information falling under section 552.136 of the Government Code pursuant to Open Records Letter No. 684 (2009), and indicate you will withhold social security numbers in accordance with section 552.147 of the Government Code.<sup>1</sup> You claim that

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<sup>1</sup>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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 section 651.203 of the Occupations Code, which provides “[i]nformation in a [complaint file maintained by the commission], other than information relating to a complaint that has not reached a final disposition, is public information.” Occ. Code § 651.203(b). We conclude this language makes information relating to a complaint that has not reached a final disposition confidential. You state the information in Attachment 2 relates to an open complaint that has not reached a final disposition. Based upon your representation and our review of the information at issue, we conclude the commission must withhold the information in Attachment 2 under section 552.101 of the Government Code in conjunction with section 651.203(b) of the Occupations Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that certain other types of information also are private under section 552.101. *See Open Records Decision No. 659* at 4-5 (1999) (summarizing information attorney general has held to be private); *see also Nat’l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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 also have determined common-law privacy encompasses certain types of personal financial information. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545* at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), *523* at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), *373* at 4 (1983) (determination of

whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). However, we note the names, addresses, and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Finally, a compilation of an individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). However, criminal history information provided by the named individual as part of his application for a license with the commission was not compiled by any governmental body. You do not provide arguments demonstrating how any submitted information consists of criminal history record information compiled by the commission. Upon review, we find the information we have marked in Attachment 3 is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the commission must withhold the information we have marked in Attachment 3 under section 552.101 of the Government Code in conjunction with common-law privacy. The commission has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the commission may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in part:

(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(b)–(c). 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 none of the remaining information consists of records created

by either a physician or someone under the supervision of a physician. Accordingly, the MPA is not applicable, and the commission may not withhold any of the remaining information on that basis.

We note the remaining information contains social security numbers. 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 under the Act. Gov't Code § 552.147(b). However, section 552.147(b) does not apply to the social security number of a deceased individual. *See id.* Therefore, the commission may not withhold the social security number of the deceased individual under section 552.147. However, the commission may withhold the social security numbers of living individuals in the remaining information under section 552.147.

In summary, the commission must withhold the information in Attachment 2 under section 552.101 of the Government Code in conjunction with section 651.203(b) of the Occupations Code. The commission must withhold the information we have marked in Attachment 3 under section 552.101 of the Government Code in conjunction with common-law privacy. The commission may withhold the social security numbers of living individuals in the remaining information under section 552.147. 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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 452671

Enc. Submitted documents

c: Requestor  
(w/o enclosures)