



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-16301

Dear Ms. Cost:

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# 467747 (PIR# 12-2466).

The Texas Department of Public Safety (the "department") received a request for any disciplinary actions related to a named former trooper. You indicate the department has released some of the information with redactions pursuant to the previous determination issued to the department in Open Records Letter No. 2010-12863 (2010).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.147 of the Government Code.² 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 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

¹Open Records Letter No. 2010-12863 serves as a previous determination authorizing the department to withhold certain personnel records of commissioned officers of the department under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. See Gov't Code § 411.00755(b)(1)-(12), (c); see also *id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

²Although you do not raise sections 552.117, 552.130, and 552.147 in your arguments, we understand you to raise these exceptions based on your markings in the submitted information.

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to the files of an investigation into sexual harassment in the workplace. The information at issue in *Ellen* included witness statements, an affidavit in which the individual accused of misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See id.* at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, but concluded “the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.* You contend the submitted information is protected by common-law privacy as applied in *Ellen*. In this case, however, the victims of the harassment at issue were not employees of the department. Therefore, *Ellen* is not applicable to the submitted information and it may not be withheld on that basis under section 552.101 of the Government Code in conjunction with common-law privacy.

Nonetheless, this office has determined some kinds of medical information or information indicating disabilities or specific illnesses are 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, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5–6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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). The Texas Supreme Court 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.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the department must withhold the information you have marked, and the information we have marked, under section 552.102(a) of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records

Decision No. 530 at 5 (1989). We note a post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (legislative history makes clear purpose of section 552.117 is to protect public employees from being harassed at home). You indicate the former trooper requested that his personal information be kept confidential prior to the department's receipt of the request. Accordingly, the department must withhold the information pertaining to the former trooper that you have marked, and the information we have marked and indicated, under section 552.117(a)(1) of the Government Code. We note some of the information you have marked is not subject to section 552.117 of the Government Code and may not be withheld on that basis. Accordingly, the department must release this information, which we have marked.

Section 552.117(a)(2) of the Government Code excepts from disclosure the same information for a peace officer, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, the department must withhold the information we have marked that pertains to other troopers employed by the department under section 552.117(a)(2) of the Government Code.³ However, the marked cellular telephone number may be withheld only if the cellular service is paid for with personal money.

Section 552.1175 of the Government Code excepts from disclosure the same information as section 552.117 when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁴ *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). The submitted information contains personal information for a peace officer who is not a department employee. To the extent this individual elects to keep her personal information confidential, the department must withhold the information we have marked and indicated under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. *Id.* § 552.130(a). Accordingly, the department must withhold the information you

³As our ruling is dispositive, we do not address section 552.147 of the Government Code.

⁴The 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).

have marked, and the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information you have marked, and the information we have marked, under section 552.102(a) of the Government Code; (3) the information you have marked, and the information we have marked and indicated, under section 552.117(a)(1) of the Government Code; (4) the information we have marked under section 552.117(a)(2) of the Government Code, but the marked cellular telephone number may be withheld only if the service is paid for with personal money; (5) the information we have marked and indicated under section 552.1175 of the Government Code, if the individual at issue elects to keep this information confidential; and (6) the information you have marked, and the information we have marked, under section 552.130 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 467747

Enc. Submitted documents

c: Requestor
(w/o enclosures)