



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

December 17, 2012

Mr. Jeffrey L. Moore  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-20251

Dear Mr. Moore:

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# 474053.

The Roanoke Police Department (the "department"), which you represent, received a request for a named officer's personnel file. You state the department redacted insurance policy numbers under section 552.136 of the Government Code in accordance with Open Records Decision No. 684 (2009) and social security numbers under section 552.147 of the Government Code.<sup>1</sup> You state the department has provided some of the requested information to the requestor but claim some of the submitted information is excepted from

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specified categories of information, including insurance policy 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 Gov't Code § 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 Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011.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. 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.

disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us the department received the request for information on September 18, 2012. Thus, the department's ten-business-day deadline to request a ruling was October 2, 2012. However, the envelope containing your request for a ruling from this office has two metermarks: the first is dated September 27, 2012, and the second is dated October 8, 2012. Upon review, we find you have not established the department complied with its procedural obligations under section 552.301(b) of the Government Code. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome this presumption.<sup>3</sup> Therefore, we will consider whether these sections require the department to withhold any of 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 other statutes make confidential, such as section 611.002 of the Health and Safety Code, which provides in part as follows:

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<sup>2</sup>Although you also marked some of the submitted information under section 552.1175 of the Government Code, we understand from your arguments you intended to assert section 552.117 of the Government Code for this information instead.

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

(a) Communications 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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). You assert some of the submitted information consist of mental health records that are subject to chapter 611 of the Health and Safety Code. Upon review, we agree this information, which you have marked, is confidential under chapter 611 and, thus, the department must withhold it from release under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses 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). The types of information considered intimate or 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. Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual’s mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job).

Upon review, we find some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law

privacy.<sup>4</sup> However, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code. 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 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). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>5</sup> Gov’t Code § 552.117(a)(2). 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). We note some of the information you have marked under section 552.117(a)(2) does not consist of a home address, home telephone number, emergency contact information, social security number, or family member information of the officer at issue. Therefore, this information, which we have marked for release, is not excepted from disclosure pursuant to section 552.117(a)(2), and the department must release it to the requestor. Nevertheless, we agree the department must withhold the remaining information you have marked, as well as the information we have marked, under section 552.117(a)(2).<sup>6</sup> However, the department may only withhold the cellular telephone number you have marked on that ground if it was not provided to the officer at issue at public expense.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

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<sup>4</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>5</sup>“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

<sup>6</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Some of the information you have marked under section 552.130 does not relate to motor vehicle record information or a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the department may not withhold this information, which we have marked for release, under section 552.130, but instead must release it to the requestor. However, we agree the department must withhold the remaining motor vehicle record information you have marked, as well as the information we have marked, under section 552.130.<sup>7</sup>

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue in the remaining information does not appear to be of a type specifically excluded by section 552.137(c), and you inform us its owner has not affirmatively consented to its release. Therefore, we agree the department must withhold the e-mail address you have marked in the remaining documents under section 552.137.

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<sup>7</sup>You have marked a copy of a driver's license under Open Records Decision No. 684. As previously noted, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

To conclude, with the exception of the information we have marked for release, the department must withhold the following: (1) the information you have marked under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have marked under section 552.102 of the Government Code; (4) the information marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the cellular telephone number you have marked on that ground if it was not provided to the officer at issue at public expense; (5) the information marked under section 552.130 of the Government Code; and (6) the information you have marked under section 552.137 of the Government Code in the remaining documents. The department must release the remaining information.

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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 474053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)