



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2013

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

OR2013-08531

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# 488052 (DPS PIR Nos. 13-0881 and 13-0930).

The Department of Public Safety (the "department") received two requests for the department's Office of Inspector General investigation report pertaining to a named former department lab employee, and a list of all affected cases. We understand you have released some information to the requestor. We understand you will withhold information pursuant to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code, driver's license information pursuant to section 552.130(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim that portions of the submitted information are excepted from

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c). Section 552.130(c) of the Government Code permits a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. *See id.* § 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). 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. *Id.* § 552.147(b).

disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-20169 (2012). In that ruling, we determined the department must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code if the suspects at issue were ten years of age or older and under seventeen years of age at the times of their respective incidents. However, if the suspects at issue were not ten years of age or older and under seventeen years of age at the time of their respective incidents, then this information is not confidential under section 58.007 of the Family Code and may not be withheld under section 552.101 of the Government Code, and must be released. We understand the law, facts, and circumstances on which the previous ruling was based have not changed. Therefore, to the extent the information at issue is identical to the information ruled on in that ruling, we conclude the department must rely on Open Records Letter No. 2012-20169 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, because the remaining information at issue is not encompassed by the previous determination, we will consider your arguments.

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 (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 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. *See* 540 S.W.2d 668, 683. 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We note the dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). We find the information we have marked is highly intimate or embarrassing information of no legitimate public concern and must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102 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.” *Id.* § 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the birth dates you have marked, and the additional dates of birth we have indicated, under section 552.102 of the Government Code.

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 employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.² *See* Gov’t Code § 552.117(a)(1). We note section 552.117(a)(1) encompasses a personal cellular telephone number as long as the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to numbers for cellular mobile phones installed in county officials’ and employees’ private vehicles and intended for official business). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. We understand one of the employee’s whose information is at issue timely elected confidentiality under section 552.024. Therefore, the department must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. To the extent the other individuals whose information is at issue timely elected confidentiality under section 552.024, the department must withhold the information we have indicated under section 552.117(a)(1), including the personal cellular telephone numbers if the individuals pay for the cellular telephone service with personal funds. The department may not withhold the indicated information under section 552.117 if the individuals did not make timely elections to keep the information confidential or if the cellular telephone services are paid for by a governmental body.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the department must withhold the driver's license information we have indicated under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the dates of birth you have marked, and the additional dates of birth we have indicated, under section 552.102 of the Government Code. The department must withhold the information we have indicated under section 552.117(a)(1) of the Government Code if the individuals elected confidentiality under section 552.024 of the Government Code, and if the cellular telephone service is paid for with personal funds. The department must withhold the information we have indicated 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/akg

Ref: ID# 488052

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)