



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2013

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody 5th Floor
Galveston, Texas 77550-2317

OR2013-10312

Dear Ms. Reingold:

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# 490448.

The Galveston County District Attorney's Office (the "district attorney's office") received a request for all employment records regarding a specified person. You inform us you have released some of the submitted information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, 552.137, 552.139, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district attorney's office's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). While you raised the majority of your exceptions within the ten-business-day time period as required by

¹We note, although you also raise section 552.024 of the Government Code as an exception to disclosure, 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.

subsection 552.301(b), you did not raise section 552.102 within that time. Thus, the district attorney's office failed to comply with the requirements mandated by subsection 552.301(b) as to its arguments under section 552.102 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the district attorney's office's claim under section 552.102 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception. We will also consider your timely raised arguments against disclosure.

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." Gov't Code § 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 district attorney's office must withhold the birth date of the district attorney's office employee you have marked under section 552.102 of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that 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). Therefore, the district attorney's office may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. 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). However, section 552.117 is not applicable to a former spouse or the fact that a government employee has been divorced. You have submitted an election form showing the employee whose information is at issue timely elected to keep her home address, home telephone number, social security number, and information revealing whether she has family members confidential. Accordingly, the district attorney's office must withhold this information, which we have marked, under

section 552.117 of the Government Code, including the employee's cellular telephone number if the cellular service is paid for with personal funds.² We find the remaining information you have marked consists of the employee's emergency contact information, and the submitted information reflects the employee at issue did not request confidentiality for this information. Therefore, none of the remaining information may be withheld under section 552.117 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov't Code § 552.1175). Section 552.1175 applies, in part, to "employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]" Gov't Code § 552.1175(a)(5). You inform us some of the information you have marked pertains to assistant district attorneys employed in other counties. Therefore, the district attorney's office must withhold the information we have marked under section 552.1175 if the individuals to whom the information pertains elect to restrict access to their information in accordance with section 552.1175(b). If no election is made, the district attorney's office may not withhold the individuals' information under section 552.1175. We find none of the remaining information is subject to section 552.1175 of the Government Code. Accordingly, none of the remaining information may be withheld on that basis.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the district attorney's office must withhold the driver's license information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.³

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We note, section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Additionally, we note, regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living persons social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov't Code § 552.130(d), (e).

Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Upon review, we find the district attorney’s office must withhold the account number and password you have marked under section 552.136 of the Government Code.⁴

Section 552.137 of the Government Code 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body 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 district attorney’s office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.⁵

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 established. *Id.* at 681–82. The type of information considered highly 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. Upon review, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district attorney’s office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We note, section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *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).

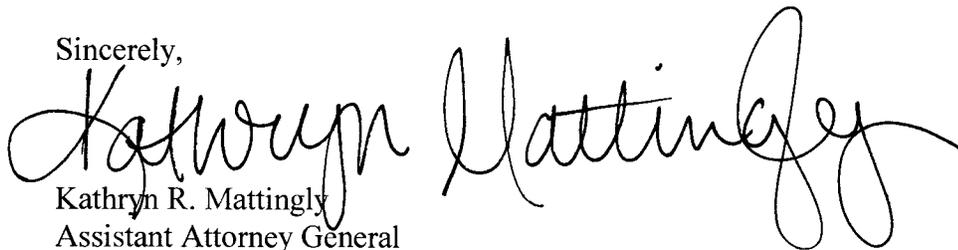
⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

In summary, the district attorney's office must withhold: (1) the birth date of the district attorney's office employee you have marked under section 552.102 of the Government Code; (2) the information we have marked under section 552.117 of the Government Code, including the cellular telephone number if the cellular telephone service is paid for with personal funds; (3) the information we have marked under section 552.1175 of the Government Code, if the individuals to whom the information pertains elect to restrict access to their information in accordance with section 552.1175(b); (4) the driver's license information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code; (5) the account number and password you have marked under section 552.136 of the Government Code; and (6) the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district attorney's office 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, reading "Kathryn R. Mattingly". The signature is fluid and cursive, with the first name "Kathryn" and last name "Mattingly" clearly legible.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 490448

Enc. Submitted documents

c: Requestor
(w/o enclosures)