



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

Mr. William Schultz
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2013-19674

Dear Mr. Schultz:

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# 505436.

The Denton County Human Resources Department (the "county") received a request for a report of calls placed through the county's voice-over-internet phone system for a specified time period.¹ You state most responsive information has been released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380,387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²Although you did not cite section 552.101 of the Government Code in your brief to this office, we understand you to raise this section based on the substance of your arguments. Further, although you raise section 552.117(a)(2) of the Government Code as an exception to disclosure of this information, we note section 552.117(a)(1) is the proper exception to raise when seeking to withhold information that is not related to a peace officer. *See* Gov't Code § 552.117(a)(2).

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. This exception encompasses information other statutes make confidential, such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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. Upon review, we find none of the submitted information constitutes medical records or information obtained from medical records. Accordingly, the county may not withhold any of the submitted information under section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the telephone numbers of employees’ doctors satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county must withhold the telephone numbers of employees’ doctors under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find no portion of the remaining information related to the entries at issue is highly intimate or embarrassing and of no legitimate public concern, and the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) 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. *See* Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone 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 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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 only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee 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. You state some of the remaining call log entries pertain to calls made to employees and employees' family members. We note section 552.117 does not apply to an individual's work telephone number. Therefore, if the county employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the employees' home and cellular telephone numbers and family member telephone numbers under section 552.117(a)(1) of the Government Code; however, the employees' cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body. The county may not withhold the telephone numbers at issue under section 552.117 if the individuals did not make timely elections to keep their information confidential or if the cellular telephone service is paid for by a governmental body. Upon review, however, we find the remaining information related to the entries at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former county employee, and the remaining information at issue may not be withheld under section 552.117(a)(1).

In summary, the county must withhold the telephone numbers of employees' doctors under section 552.101 of the Government Code in conjunction with common-law privacy. If the county employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the employees' home and cellular telephone numbers and family member telephone numbers under section 552.117(a)(1) of the Government Code; however, the employees' cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body. The county 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, appearing to read "Jennifer Burnett", with a horizontal line extending to the right from the end of the signature.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 505436

Enc. Submitted documents

c: Requestor
(w/o enclosures)