



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2013

Ms. June B. Harden
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2013-20661

Dear Ms. Harden:

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# 507604 (PIR No. 13-37231).

The Office of the Attorney General (the "OAG") received a request for the contents of the requestor's case file and the personnel file of a named employee. You state the OAG released some information to the requestor with redactions as permitted by sections 552.024(c) and 552.130(c) of the Government Code, Open Records Decision No. 684 (2009)¹ and Open Records Letter Nos. 2000-02465 (2000) and 2011-18124 (2011).²

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 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 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²In Open Records Letter No. 2000-02465 this office issued the OAG a previous determination authorizing it to withhold Title IV-D child support program information under section 552.101 of the Government Code in conjunction with section 231.108 of the Family Code without the necessity of requesting a decision from this office. In Open Records Letter No. 2011-18124 this office issued the OAG a previous determination authorizing it to withhold an employee's user ID under section 552.139 of the Government Code without the necessity of requesting a decision from this office.

POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512) 463-2100 WWW.TEXASATTORNEYGENERAL.GOV

An Equal Employment Opportunity Employer • Printed on Recycled Paper

The OAG argues some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions the OAG claims and have reviewed the submitted sample of information.³

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section 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). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 455 at 9 (1987) (employment applicant’s salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information the OAG marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the OAG must withhold the marked information 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). Upon review, we agree the information you have marked must be withheld under section 552.102(a) of the Government Code.

In summary, the OAG must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102 of the Government Code.

³We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 cursive script, appearing to read "Amy Shipp".

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/ag

Ref: ID# 507604

Enc. Submitted documents

c: Requestor
(w/o enclosures)