



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2014

Ms. Ellen H. Spalding
Counsel for Conroe Independent School District
Rogers, Morris & Grover LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2014-04904

Dear Ms. Spalding:

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# 517541.

The Conroe Independent School District (the "district"), which you represent, received a request for the civil service personnel file of a named officer. You state the district is releasing most of the requested information. You indicate you have redacted information pursuant to section 552.130(c) of the Government Code, an insurance policy number pursuant to section 552.136(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102,

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) 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). Section 552.136(c) of the Government Code allows 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 id.* § 552.136(c). 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. *See id.* § 552.147(b).

552.117, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note the submitted information contains Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") personal identification numbers. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand a TCLEOSE personal identification number is a unique computer-generated number assigned to peace officers for identification in TCLEOSE's electronic database, and may be used as an access device number on TCLEOSE's website. Accordingly, TCLEOSE personal identification numbers do not constitute public information under section 552.002 of the Government Code. Thus, the submitted TCLEOSE personal identification numbers are not subject to the Act and need not be released to the requestor.

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 section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

²Although you also raise section 552.140 of the Government Code, you have not provided any argument to support this exception. Therefore, we do not address section 552.140. *See* Gov't Code §§ 552.301(e)(1)(A), .302. Additionally, although you raise section 552.1175 of the Government Code, we note the proper exception in this instance is section 552.117(a)(2) of the Government Code because the district holds the information at issue in an employment context.

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.

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim the information you have marked is subject to section 58.007. The information at issue pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident that is the subject of this information. Further, the information at issue involves juvenile delinquent conduct that occurred after September 1, 1997. You do not inform us, and it does not appear, any of the exceptions in section 58.007 apply to the information at issue. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.⁴ However, we note the remaining information you seek to withhold under section 58.007 pertains to an internal affairs investigation. These internal affairs records do not constitute juvenile law enforcement records for the purposes of section 58.007. Therefore, the remaining information at issue is not subject to section 58.007 of the Family Code and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, we find the remaining information does not consist of confidential CHRI and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprints we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, we find the remaining information is not subject to section 560.003 and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which pertains to mental health records and provides “[c]ommunications 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.” Health & Safety Code § 611.002(a). Upon review, we find the information we have marked is confidential under section 611.002 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code on that basis.⁵

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See Occ. Code* §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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.

⁵As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

(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.

Id. § 159.002(a)-(c). Information 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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA.⁶ However, we find the remaining information at issue is not subject to the MPA and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the Americans with Disabilities Act ("ADA"). *See* 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA requires information about the medical conditions and medical histories of applicants or employees be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. 29 C.F.R. § 1630.14(c). An employer's medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as a confidential medical record. *Id.*; *see also* Open Records Decision No. 641 (1996). The federal Equal Employment Opportunity Commission (the "EEOC") has determined medical information for purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Upon review, we find you have not demonstrated the ADA is applicable to any portion of the remaining information. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

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). To demonstrate the applicability of common-law privacy,

⁶As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, this office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082 (2)(B) (criminal history record information does not include driving record information). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Additionally, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁷ However, we find none of the remaining information to be highly intimate or embarrassing and not of legitimate public concern. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

⁷As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find the district must withhold the dates of birth you have marked, along with the dates of birth we have marked, in the remaining information under section 552.102(a) of the Government Code. However, we find the remaining information is not subject to section 552.102(a) and may not be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. *See Gov’t Code § 552.117(a)(2)*. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117 also protects a peace officer’s personal cellular telephone number if a governmental body does not pay for the cellular telephone service. *See Open Records Decision No. 670 at 6 (2001) (Gov’t Code § 552.117(a)(2) excepts from disclosure peace officer’s cellular telephone or pager number if officer pays for cellular telephone or pager service)*. Accordingly, the district must withhold the information you have marked, along with the information we have marked, under section 552.117(a)(2); however, the district may only withhold the marked cellular telephone numbers if the cellular service was not paid for by a governmental body.⁸

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

⁸We note Open Records Decision No. 670 is a previous determination that authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. ORD 670; *see also* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

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* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Accordingly, the district must withhold the e-mail addresses you have marked, along with the e-mail addresses we have marked under section 552.137, unless the owners affirmatively consent to their release.⁹

In summary, the TCLEOSE numbers in the submitted information are not subject to the Act and need not be released to the requestor. The district must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (3) the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (4) the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (5) the information we marked under section 552.101 of the Government Code in conjunction with the MPA; (6) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (7) the dates of birth you marked, along with the dates of birth we marked, under section 552.102(a) of the Government Code; (8) the information you marked, along with the information we marked, under section 552.117(a)(2) of the Government Code; however, the district may only withhold the marked cellular telephone numbers if the cellular service was not paid for by a governmental body; and (9) the e-mail addresses you marked, along with the e-mail addresses we marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The district must release the remaining information that is subject to the Act.

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

⁹We note Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of seeking a decision from the attorney general. *See* ORD 684.

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 that reads "Megan G. Holloway". The signature is written in black ink and is positioned above the typed name.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 517541

Enc. Submitted documents

c: Requestor
(w/o enclosures)