



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2014

Ms. Laura Russell
Attorney
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2014-09035

Dear Ms. Russell:

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# 523782 (TPWD #2014-03-R10).

Texas Parks and Wildlife Department (the "department") received a request for the report pertaining to a specified internal affairs investigation. You state you have released some information to the requestor. You indicate you will redact information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

¹Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former 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 at 6.

²We note the department did not comply with section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we note the requestor only seeks the report pertaining to the specified internal affairs investigation. You have submitted information other than the requested report. This information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the department is not required to release nonresponsive information in response to this request.

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 information made confidential by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. The information at issue contains information acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, you have failed to demonstrate how any of the remaining information at issue was acquired from a polygraph examination. Thus, the department may not withhold any of the remaining responsive information under

section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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. Upon review, we find a portion of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the requestor is a parent of the minor child whose privacy interest is at issue. Thus, the requestor has a right of access to information pertaining to his child that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department may not withhold information pertaining to his child from this requestor under section 552.101 of the Government Code on the basis of common-law privacy. Further, we find none of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern. Thus, the department may not withhold any of the remaining responsive 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.” 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 find the department must withhold the dates of birth you have marked under section 552.102 of the Government Code.

We note some of the remaining responsive information is subject to section 552.1175 of the Government Code.³ Section 552.1175 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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. We have marked information pertaining to an individual who may be among the types of individuals listed in section 552.1175(a), and the information is not held by the department in an employment capacity. Thus, if the information we have marked relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to the information in accordance with section 552.1175(b), then the department must withhold the marked information under section 552.1175. If the individual at issue is not an individual to whom section 552.1175 applies or if no election is made, the department may not withhold the marked information under section 552.1175 of the Government Code.

In summary, the department must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (2) the dates of birth you have marked under section 552.102(a) of the Government Code; and (3) the information we have marked under section 552.1175 of the Government Code, if this information relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to the information in accordance with section 552.1175(b). The department must release the remaining responsive information.⁴

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

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⁴We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023; ORD 481. Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 523782

Enc. Submitted documents

c: Requestor
(w/o enclosures)