



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2014

Ms. Sylvia Hardman-Dingle
General Counsel
Office of General Counsel
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard, Suite 300
Austin, Texas 78756

OR2014-19866

Dear Ms. Hardman-Dingle:

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# 541855 (DARS PIA No. 201408/14-1).

The Texas Department of Assistive and Rehabilitative Services ("DARS") received a request for a list of all accident history reports involving DARS's fleet of vehicles for a specified time period and the costs incurred as a result of such accidents. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹We note DARS may have violated section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). Nonetheless, sections 552.101 and 552.130 are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of these exceptions to the submitted information, notwithstanding DARS's possible violation of section 552.301 in requesting this decision.

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. The purpose of chapter 111 of the Human Resources Code is to provide rehabilitation and related services to eligible individuals with disabilities so they may prepare for and engage in a gainful occupation or achieve maximum personal independence. *See* Hum. Res. Code § 111.001. Section 111.018(b) of the Human Resources Code reads as follows:

In carrying out his or her duties under this chapter, the commissioner [of DARS] shall, with the approval of the board, implement policies addressing . . . the protection of records and confidential information . . . and other regulations subject to this section as necessary to carry out the purposes of this chapter.²

Id. § 111.018(b). Under the authority of section 111.018(b), DARS promulgated section 101.809 of title 40 of the Texas Administrative Code, which reads as follows:

(a) Consumer records.

(1) All personal information available to DARS employees as they administer rehabilitation services programs, including names, addresses, and records of consumer evaluations, is confidential.

(2) DARS may use such information and records only for purposes directly connected with administering the rehabilitation programs.

(3) DARS may directly or indirectly disclose information only in administering the rehabilitation programs, except with the consumer’s written consent, in compliance with a court order, or in accordance with a federal or state law or regulation. DARS may not share information containing identifiable personal information with advisory or other bodies that do not have official responsibilities for administration of the programs.

(4) Upon a consumer’s request, DARS releases information to a consumer or, as appropriate, his parent, guardian, or other representative. If, in the opinion of the counselor, release to the consumer of a particular document in the consumer case file will have a harmful effect on the consumer, the consumer will be notified that

²The 78th Legislature transferred all powers, duties, functions, programs, and activities of the former Texas Rehabilitation Commission to DARS effective March 1, 2004. *See* Act of June 1, 2003, 78th Leg., R.S., ch. 198, §§ 1.01, 1.21, 1.26, 2003 Tex. Gen. Laws 611, 612, 641.

there is information in the case file that can be released only to an appropriate representative designated in writing by the consumer.

(5) All consumer information is the property of DARS.

(b) Other records.

(1) Release of consumer records must be made in accordance with federal law and regulations.

(2) DARS may provide to and receive from any state agency other nonconfidential information for the purpose of increasing and enhancing services to consumers and improving agency operations.

40 T.A.C. § 101.809; *see also* 29 U.S.C. § 721(a)(10)(F) (discussing confidentiality of identities of applicants and eligible individuals under federal Rehabilitation Act of 1973 and its amendments, 29 U.S.C. §§ 701-751); 34 C.F.R. § 361.38(a)(1) (same). You represent the information you have marked consists of the names and identification numbers of consumers of rehabilitation services programs. *See* 40 T.A.C. § 101.809(a)(1). You state the requestor has not provided a release from any of these consumers, established he will use this information in a vocational rehabilitation program, or demonstrated any other exceptions allowing disclosure apply. Therefore, we agree DARS must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 101.809 of title 40 of the Texas Administrative 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983). 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* ORD 373.

Some of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude, DARS must withhold the information we have marked under section 552.101 of the Government Code in conjunction

with common-law privacy. However, we find you have failed to demonstrate how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. As such, DARS may not withhold the remaining information under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude DARS must withhold the information you have marked and the additional information we have marked under section 552.130.

We note portions of the remaining information are subject to section 552.136 of the Government Code.³ Section 552.136 states, "Notwithstanding 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(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, DARS must withhold the marked insurance policy numbers under section 552.136.

In summary, DARS must withhold the following information: (1) the information you have marked under section 552.101 of the Government Code in conjunction with section 101.809 of title 40 of the Texas Administrative Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information you have marked and the additional information we have marked under section 552.130 of the Government Code; and (4) the marked insurance policy numbers under section 552.136 of the Government Code. DARS must release the remaining information.

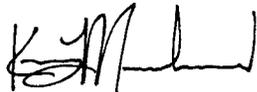
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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).

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 'Kenny Moreland', with a stylized, cursive script.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 541855

Enc. Submitted documents

c: Requestor
(w/o enclosures)