



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 1, 2016

Ms. Lindsey Wolf  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2060

OR2016-24274

Dear Ms. Wolf:

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# 633413.

The Office of the Secretary of State (the "secretary of state's office") received a request for the personnel file, job description, and resume of a named individual. You state the secretary of state's office is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code, access device numbers pursuant to section 552.136(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You further state the secretary of state's office is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

state the secretary of state's office has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we agree the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the secretary of state's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the secretary of state's office may not withhold any portion of the remaining information under section 552.101 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). 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

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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. Having carefully reviewed the information at issue, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the secretary of state's office may not withhold any of the remaining information on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). 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)*. In this instance, you state the information at issue belongs to a current employee of the secretary of state's office 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 the secretary of state's office is withholding information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>4</sup> The secretary of state's office must also withhold the information you have marked within the remaining documents under section 552.117(a)(1) of the Government Code.

You claim portions of the remaining information are protected from public disclosure under section 552.132 of the Government Code, which provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to

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<sup>4</sup>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 current or former employee or official chooses not to allow public access to the information. *See Gov't Code* § 552.024(c).

identify the victim, including a photograph or other visual representation of the victim.

*Id.* § 552.132(b), (d). The information at issue is held by the secretary of state's office, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you state the information pertains to an employee of the secretary of state's office who is not a victim who made an election in accordance with section 552.132(d). Accordingly, the secretary of state's office may not withhold any of the remaining information under section 552.132 of the Government Code.

In summary, the secretary of state's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The secretary of state's office must also withhold the information you have marked within the remaining documents under section 552.117(a)(1) of the Government Code. The secretary of state's office 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 633413

c: Requestor