



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Mr. Vance Hinds  
Assistant County & District Attorney  
County of Ellis  
109 South Jackson  
Waxahachie, Texas 75165

OR2016-01685

Dear Mr. Hinds:

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# 595088.

The Ellis County Judge's Office (the "judge's office") received two requests from the same requestor for (1) e-mails between two named employees during a specified period of time; and (2) disciplinary action notices, civil and employee complaints, and human resources documents pertaining to one of the two named employees. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We note the information we have marked is not responsive to the instant request for information because it does not consist of e-mails between the named employees or disciplinary action notices, civil and employee complaints, and human resources documents pertaining to the named employee. This ruling does not address the public availability of

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<sup>1</sup>Although you raised section 552.101 of the Government Code in conjunction with constitutional privacy and section 552.111 of the Government Code, you have not submitted arguments explaining how constitutional privacy or section 552.111 applies to the submitted information. Therefore, we assume you have withdrawn these claims. See Gov't Code §§ 552.301(e)(1)(A), .302.

non-responsive information, and the judge's office is not required to release non-responsive 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." Gov't Code § 552.101. Section 552.101 encompasses chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent part:

(a) Communications 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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find you have not demonstrated any portion of the responsive information consists of a mental health record for purposes of chapter 611 of the Health and Safety Code. Accordingly, the judge's office may not withhold any portion of the responsive information under section 552.101 of the Government Code on that basis.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the judge's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the judge's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the judge's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees whose information is at issue did not timely request confidentiality under section 552.024, the judge's office may not withhold the information at issue under section 552.117(a)(1).

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.<sup>2</sup> *Id.* § 552.117(a)(2). Section 552.117 also encompasses personal cellular telephone and pager numbers, provided a governmental body does not pay for the services. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The remaining information contains personal information of a licensed peace officer. The judge's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code pertaining to the peace officer; however, the judge's office may only withhold the cellular telephone number at issue under section 552.117(a)(2) if the cellular telephone service was not provided to the licensed peace officer at issue at public expense. If a governmental body pays for the cellular telephone service, the cellular telephone number may not be withheld under section 552.117(a)(2) of the Government Code.

In summary, the judge's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the judge's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The judge's office must withhold the

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<sup>2</sup>Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

information pertaining to the licensed peace officer that we have marked under section 552.117(a)(2) of the Government Code; however, the judge's office may only withhold the cellular telephone numbers at issue under section 552.117(a)(2) if the cellular telephone service was not provided to the peace officer at issue at public expense. The remaining information must be released.

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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 595088

Enc. Submitted documents

c: Requestor  
(w/o enclosures)