



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2017

Ms. Madeleine Connor
Interim General Counsel
Texas Veterans Commission
P.O. Box 12277
Austin, Texas 78711-2277

OR2017-01932

Dear Ms. Connor:

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# 643482 (TVC PIA Request # 2016-30).

The Texas Veterans Commission (the "commission") received a request for four categories of information related to the requestor's former employment with the commission.¹ We understand you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹You state the commission sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We note although you raise section 552.305 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for decision. *Id.*

Section 552.101 of the Government Code exempts 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 information made confidential by other statutes. Section 5701 of title 38 of the United States Code states, in pertinent part:

(a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary [of the United States Department of Veterans Affairs (the “Secretary”)] and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the [United States Department of Veterans Affairs (“the VA”)] shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.

(b) The Secretary shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:

(1) To a claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone when, in the judgment of the Secretary, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 5109 or 7109 of this title.

38 U.S.C. § 5701(a), (b)(1); *see also* 38 C.F.R. §§ 1.500-1.527. You state the submitted information relates to veterans’ claims for benefits provided by the VA. However, we find the information at issue is not in the possession of the VA. *See* 38 U.S.C. § 5701(a). Additionally, you do not explain, and our review of the information does not find, the commission obtained the information at issue from the VA as a duly authorized agent or representative of a claimant pursuant to section 5701(b)(1). *Id.* § 5701(b)(1). Accordingly, we conclude the marked information is not confidential pursuant to section 5701, and it may not be withheld 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 conclude the information we have marked meets the

standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the commission may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy. As no further exceptions to disclosure are raised, the remaining information must be released.³

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 643482

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being release contains a social security number. 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).