January 27, 2017

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2017-01942

Dear Mr. Miles:

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# 643254 (HHSC ID# 11881).

The Texas Health and Human Services Commission (the “commission”) received a request for a specified complaint involving the requestor. You state you will redact information under sections 552.130(c) and 552.147(b) of the Government Code. You state you will withhold information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code. You also state you will redact e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous

1We note 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 552.147(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).

2Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. See Gov’t Code § 552.117(a)(1). 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 employee or official or former employee or official chooses not to allow public access to the information. See id § 552.024(c).
determination in Open Records Decision No. 684 (2009). You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state you notified the Texas Department of Aging and Disability Services of the request for information pursuant to section 552.304 of the Government Code. See Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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). 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 commission must withhold the dates of birth you marked under section 552.102(a) of the Government Code.

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 section 595.001 of the Health and Safety Code, which provides:

Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law.

See Health & Safety Code § 595.001. You assert the information you marked pertains to the identity, diagnosis, evaluation, or treatment of clients of state supported living centers, which constitute intellectual disability programs in the State of Texas. You assert the information at issue pertains to clients of state supported living centers. You also assert the disclosure provisions are inapplicable here. However, upon review of the information at issue, we find that it is not the type of information that is confidential under section 595.001 of the Health

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3 Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

4 As of the date of this letter, we have not received comments from the Texas Department of Aging and Disability Services explaining why the submitted information should not be released.
and Safety Code. Therefore, none of the information you marked is confidential under section 595.001 of the Health and Safety Code and the commission may not withhold it under section 552.101 on that ground.


In summary, the commission must withhold the dates of birth you marked under section 552.102(a) of the Government Code. The commission must withhold the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must release the remaining information.

You ask this office to issue a previous determination permitting the commission to withhold the dates of birth of current and former employees of the commission when the dates of birth are held in an employment context under section 552.102 of the Government Code. *See Gov’t Code § 552.301(a)* (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the commission to withhold dates of birth of living current and former employees of the commission. This previous determination is not applicable to dates of birth belonging to deceased former employees of the commission. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. *See Gov’t Code § 552.023(a)*; Open Records Decision 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable

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5Section 552.102(a) 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).*
to a date of birth requested by a person or the authorized representative of a person whose
date of birth is at issue. So long as the elements of law, fact, and circumstances do not
change so as to no longer support the findings set forth above, the commission need not ask
for a decision from this office again with respect to this type of information. See ORD 673
at 7-8 (listing elements of second type of previous determination under Gov’t Code §552.301(a)).

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,

[Signature]

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 643254

Enc. Submitted documents

c: Requestor
 (w/o enclosures)