



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 23, 2017

Mr. Alan T. Ozuna  
Counsel for the Tropical Texas Behavioral Health Center  
Denton Navarro Rocha Bernal Hyde & Zech, P.C.  
701 East Harrison, Suite 100  
Harlingen, Texas 78550-9165

OR2017-14084

Dear Mr. Ozuna:

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# 663430.

The Tropical Texas Behavioral Health Center (the "center"), which you represent, received a request for documents and information related to eight specified job applications. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find no portion of the submitted information is highly intimate or embarrassing information of an individual that is of no legitimate public concern. Accordingly, the center may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of 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.<sup>1</sup> *See* Gov't Code §§ 552.117(a)(1), .024. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *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). 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 only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the center must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the center may not withhold the information we marked under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Thus, to the extent the information at issue pertains to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the center must withhold the information we marked under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the center must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

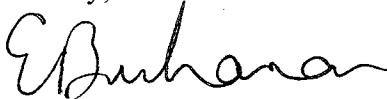
address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. You state the owners of the e-mail addresses have not affirmatively consented to their public disclosure. Accordingly, the center must withhold the e-mail addresses you marked under section 552.137 of the Government Code.

In summary, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the center must withhold the information we marked under section 552.117(a)(1) of the Government Code. To the extent the information at issue pertains to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the center must withhold the information we marked under section 552.1175 of the Government Code. The center must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The center must withhold the e-mail addresses you marked under section 552.137 of the Government Code. 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,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 663430

Enc. Submitted documents

c: Requestor  
(w/o enclosures)