



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Mr. Craig M. Price  
Assistant Criminal District Attorney  
Grayson County  
200 South Crockett Street  
Sherman, Texas 75090

OR2019-03206

Dear Mr. Price:

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# 749085.

The Grayson County Criminal District Attorney's Office (the "district attorney's office") received a request for the personnel file of a named former employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code.<sup>1</sup> 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 section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as the following:

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<sup>1</sup>We note, and the district attorney's office acknowledges, it did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352. We also note 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).

[A] taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the district attorney's office must withhold the W-4 form we marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 159.002 of the Occupations Code, which provides, in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded the protection afforded by section 159.002 extends to records created by either a physician or someone under the supervision of a physician and information obtained from those records. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982)*. We note some of the remaining information contains the results of drug tests. Section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001(3). Because the individual at issue did not receive medical care in the administration of the drug test, this individual is not a patient for purposes of section 159.002. Upon review, we find none of the remaining information constitutes medical records subject to section 159.002. Accordingly, the district attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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 district attorney’s office must withhold the date of birth we marked under section 552.102(a) of the Government Code.

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). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> However, we find the district attorney’s office has failed to demonstrate the remaining information it marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the district attorney’s office may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open

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

Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state the employee at issue has elected to keep the information at issue confidential. Accordingly, the district attorney's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. However, we find the remaining information at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the district attorney's office, and the district attorney's office may not withhold the remaining information at issue under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information is subject to section 552.130. Thus, the district attorney's office may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>4</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Thus, the city must withhold the bank account and routing numbers we marked under section 552.136 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 address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Upon review, we find the remaining information at issue does not consist of e-mail addresses for purposes of section 552.137. Therefore, the district attorney's office may not withhold any of the remaining information at issue under section 552.137 of the Government Code.

In summary, the district attorney's office must withhold the W-4 form we marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The district attorney's office must withhold the date of birth we marked under section 552.102(a) of the Government Code. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. The district

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The district attorney's office must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code. The district attorney'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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 749085

Enc. Submitted documents

c: Requestor  
(w/o enclosures)