



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 20, 2019

Mr. Brian Sears
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 787773-0001

OR2019-16798

Dear Mr. Sears:

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# 771500 (PIR# 19-1466).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a named individual.¹ You state the department released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.137, and 552.139 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 encompasses section 1702.085 of the Occupations Code, which provides as follows:

Records maintained by the department under this chapter on the home address, home telephone number, driver's license number, or social security number of an applicant or a license holder, registrant, or security officer

¹The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

commission holder are confidential and are not subject to mandatory disclosure under [the Act].

Occ. Code § 1702.085. You inform us the information you marked under section 1702.085 consists of the home address, home telephone number, driver's license number, and social security number of a license holder that is maintained by the department under chapter 1702 of the Occupations Code. *See id.* §§ 1702.004, .005 (granting department, through the Texas Private Security Board, power to license and regulate investigations companies and security services contractors). Upon review, we find some of the information at issue, which we marked for release, does not consist of the home address, home telephone number, driver's license, or social security number of a person applying for a license under or holding a license under chapter 1702 of the Occupations Code. Thus, the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 1702.085 of the Occupations Code. However, we agree the department must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with section 1702.085 of the Occupations Code.

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides in part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state the department has implemented an online application process called Texas Online Private Security ("TOPS"). You explain the submitted e-mail address is equivalent to a user name used to access TOPS. You state this e-mail address is "used for both login and the user authentication process," and the department "sends tokens through e-mail to the user to verify that they have access to that account in order to login to the

system.” Based on these representations and our review of the submitted information, we find the department has demonstrated the information at issue relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the computer network as contemplated in section 552.139(a). Accordingly, the department must withhold the e-mail address you marked under section 552.139(a) of the Government Code.²

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 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. 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). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. See *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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked and the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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.³ See Gov’t Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, with the exception of the information we marked for release, the department must withhold the information you marked under section 552.101 of the Government Code

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

in conjunction with section 1702.085 of the Occupations Code. The department must withhold the e-mail address you marked under section 552.139(a) of the Government Code. The department must withhold the public citizen's date of birth and the information we marked under section 552.101 of the Government Code. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department 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, 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 Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 771500

Enc. Submitted documents

c: Requestor
(w/o enclosures)