



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 24, 2019

Mr. Joseph Behnke  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2019-20300

Dear Mr. Behnke:

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# 774431 (ORR Nos. 154-19 & 155-19).

The Office of the Governor (the "governor's office") received two requests from the same requestor for all information related to the appointment of two named individuals to specified positions.<sup>1</sup> The governor's office states it will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2018-03412 (2018).<sup>2</sup> The governor's office states it is withholding information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>3</sup> The

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<sup>1</sup>The governor's office states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Open Records Letter No. 2018-03412 authorizes the governor's office to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting an attorney general decision.

<sup>3</sup>Section 552.117 of the Government Code 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. *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 current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

governor's office further states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>4</sup> The governor's office states it is releasing some of the requested information. The governor's office claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the governor's office claims and reviewed the submitted representative sample of information.<sup>5</sup> We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 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 agree most of the information the governor's office marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the governor's office has not demonstrated some of the information it marked is highly intimate or embarrassing or the information is of legitimate public concern in this context. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we marked for release, the governor's office must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The governor'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/>

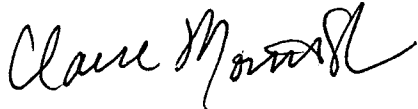
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<sup>4</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

<sup>5</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

[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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/gw

Ref: ID# 774431

Enc. Submitted documents

c: Requestor  
(w/o enclosures)