



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Ms. Roberta B. Cross
Township Attorney
The Woodlands Township
2801 Technology Forest Boulevard
The Woodlands, Texas 77381

OR2019-32690

Dear Ms. Cross:

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# 796376 (PIR# 2019-129).

The Woodlands Township (the "township") received a request for a list of township employees and information pertaining to certain notices, positions, and procedures. You state the township will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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*

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Accordingly, the township must withhold all employees' dates of birth in the submitted information under section 552.102(a) of the Government Code. However, upon review, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the township may not withhold any of the remaining information on that basis.

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. *See Gov't Code* § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)*. We note a post office box number is not a "home address" for purposes of section 552.117(a). *See Open Records Decision No. 622 at 4 (1994)* (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the township must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the township may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. However, we find the township has failed to demonstrate any of the remaining information at issue is subject to section 552.117. Therefore, the township may not withhold any of the remaining information at issue under section 552.117 of the Government Code.

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 common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas 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 established. *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 also found personal financial information not relating to a

financial transaction between an individual and a governmental body is generally private. *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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). We note information belonging to individuals who have been de-identified may not be withheld under common-law privacy as the de-identified individuals' privacy interests are, thus, protected.

Upon review, we conclude the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the township must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing of an identifiable individual and of no legitimate public concern, and the township may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the township must withhold all employees' dates of birth in the submitted information under section 552.102(a) of the Government Code. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the township must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the township may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The township must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The township 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/rm

Ref: ID# 796376

Enc. Submitted documents

c: Requestor
(w/o enclosures)