



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Mr. Kevin Christiansen
Staff Attorney
Katy Independent School District
P.O. Box 159
Katy, Texas 77492-0159

OR2020-08546

Dear Mr. Christiansen:

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# 817641 (Ref. No. 20418_40_Po).

The Katy Independent School District (the "district") received a request for certain categories of information pertaining to a named former district police officer. You state the district has released some information. We understand the district has redacted information protected by sections 552.117 and 552.130 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy five years and may only be disclosed in accordance with section 552.140

¹ Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

or in accordance with a court order. *See* Gov't Code § 552.140(a) (b). We note the district came into possession of the submitted military discharge records after September 1, 2003. Accordingly, we conclude the district must withhold the submitted DD-214 form under section 552.140 of the Government Code.²

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by section 1701.306 of the Occupations Code. Section 1701.306 makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides, in part:

(a) [TCOLE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Therefore, the district must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.³

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by

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

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

this chapter.

(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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990).

Upon review, we are unable to determine whether the information we have marked was created by a physician or someone under the supervision of a physician. Thus, we must rule conditionally. To the extent the information we have marked was created by a physician or a person acting under the supervision of a physician, then the information we have marked is confidential under the MPA and must be withheld under section 552.101 of the Government Code.⁴ If the information we have marked was not created by a physician or person acting under a physician's supervision, then this information is not confidential under the MPA and may not be withheld from the requestor under section 552.101 on that basis.

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.”⁵ Gov't Code § 552.102(a). The Texas Supreme Court has considered the applicability of section 552.102 and has 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

⁴ In this instance, as our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁵ 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).

336, 348 (Tex. 2010). Upon review, we find the district must withhold the former officer's date of birth under section 552.102(a) of the Government Code.⁶

Section 552.101 of the Government Code also encompasses the doctrine of 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 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). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We note an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. See Open Records Decision Nos. 554 (1990), 448 (1986). 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).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁷ However, we find you failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate

⁶ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁷ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

public concern. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

As noted above, we understand the district is withholding information subject to section 552.117 of the Government Code.⁸ We note the submitted information contains additional information subject to section 552.117. Section 552.117(a)(2) of the Government Code exempts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. 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). Upon review, we find some of the remaining information may be subject to section 552.117(a)(2). We note the individual whose information is at issue may be a currently licensed peace officer as defined by article 2.12. Accordingly, to the extent the information at issue pertains to an individual who is currently a licensed peace officer as defined by article 2.12, the district must withhold the information you marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, any cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individual whose information is at issue is no longer a licensed peace officer as

⁸ Section 552.117 of the Government Code exempts 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).

defined by article 2.12, then the district may not withhold the marked information under section 552.117(a)(2).

If the individual is not currently-a licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 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). 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 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 who did not timely request under section 552.024 the information be kept confidential. As noted above, 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* ORD 506 at 5-6. Therefore, if the individual at issue made timely elections under section 552.024, then the district must withhold the information you marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, any marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.

As noted above, we also understand the district will withhold motor vehicle record information, which you marked, pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional motor vehicle record information. We also note you have marked information that does not consist of motor vehicle record information for purposes of section 552.130. 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, with the exception of the information we have marked for release, the district must withhold the motor vehicle record information you marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the district must withhold the submitted DD-214 form under section 552.140 of the Government Code. The district must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. If the information we have marked was created by a physician or a person acting under the supervision of a physician, then the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with the MPA. The district must withhold the former officer's date of birth under section 552.102(a) of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the information at issue pertains to an individual who is currently a licensed

peace officer as defined by article 2.12, the district must withhold the additional information we have marked under section 552.117(a)(2) of the Government Code; however, any cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The district must withhold the information you marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, any marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. If the information at issue pertains to an individual who is not currently a licensed peace officer as defined by article 2.12, to the extent the former officer made timely elections under section 552.024 of the Government Code, the district must withhold the information you marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, any marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. With the exception of the information we have marked for release, the district must withhold the motor vehicle record information you marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code. The district 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

Ref: ID# 817641

Enc. Submitted documents

c: Requestor
(w/o enclosures)