



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 21, 2020

Mr. Jennifer Burnett
University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-14304

Dear Ms. Burnett:

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# 831733 (OGC# 196227).

The University of Texas Southwestern Medical Center (the "university") received a request for records pertaining to a named individual. You state you will release some information. You state the university is withholding certain information pursuant to sections 552.024(c) and 552.136(c) of the Government Code.¹ You claim some of the information is not subject to the Act. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The university asserts the submitted employee identification number is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office this computer-generated number provides administrative access to the university's computer

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). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

system. Based on this representation and our review, we agree the submitted university employee identification number does not constitute public information under section 552.002 of the Government Code. Accordingly, the employee identification number you have marked is not subject to the Act, and the university is not required to release it.

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 also encompasses information protected by the Medical Practice Act (the “MPA”), which governs access to medical records. Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

(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 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 subchapter 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 that is 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). Upon review, we find the information you marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by someone under the supervision of a physician. Accordingly, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 258.102(a) of the Occupations Code, which reads as follows:

The following information is privileged and may not be disclosed except as provided by this subchapter:

- (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and
- (2) a dental record.

Occ. Code § 258.102(a). A “dental record” means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). Upon review, we find the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 258.102(a) of the Occupations 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545. We note the payroll deductions for federal withholding tax are protected by common-law privacy and must be withheld under section 552.101, but the payroll deductions for social security, mandatory retirement, and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See, e.g.*, ORDs 600 at 9-12 (participation in TexFlex), 545 at 3-5; *see also* Attorney General Opinion GA-0572 at 4 (2007f) (public employee’s net salary protected by common-law privacy, but gross salary is not). Upon review, we find the some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, you have failed to demonstrate some of the information you marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, with the exception of the information we marked for release, the university must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the employee identification number you have marked is not subject to the Act, and the university is not required to release it. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with the MPA. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 258.102(a) of the Occupations Code. With the exception of the information we marked for release, the university must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/jxd

Ref: ID# 831733

Enc. Submitted documents

c: Requestor
(w/o enclosures)