



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2020

Mr. Michael Phelps
Senior Paralegal
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2020-16591

Dear Mr. Phelps:

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# 833562 (Ref. No. 20-2316).

The Harris County Appraisal District (the "district") received a request for information pertaining to three specified account numbers from a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.149 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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. This section encompasses section 22.27(a) of the Tax Code, which reads as follows:

Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales

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

prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

Tax Code § 22.27(a). We understand the district is an appraisal office for purposes of section 22.27. The district states the information it marked under section 552.101 was provided to it by a property owner in a rendition statement or other personal property report in connection with the appraisal of the owner's property pursuant to section 22.27(a). *See id.* The district also states the exceptions in section 22.27(b) are not applicable. *See id.* § 22.27(b). Based on these representations and our review, we conclude the district must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

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

(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 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.

Occ. Code § 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 determined 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 we marked is confidential under the MPA. Accordingly, the district must

withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found, v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). The district must withhold the dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). You state the submitted iFile numbers can be used to access confidential property information of value to property owners and third party professionals involved in the protests of property tax appraisals. Based on these representations, we conclude the iFile numbers at issue is an access device number for purposes of section 552.136(a). Accordingly, the district must withhold the submitted iFile numbers under section 552.136(b) of the Government Code.

Section 552.149 provides, in relevant part, the following:

- (a) Information relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of [the Act].
- (b) Notwithstanding Subsection (a), the property owner or the owner’s agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461 (a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner’s protest[.]

Gov’t Code § 552.149(a)-(b). Subsections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Harris County has a population of 50,000 or more. The district states the information it marked under section 552.149 pertains to real property sales prices, descriptions, characteristics, and other related

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

information received from a private entity. The district also states the requestor does not have a right of access to the information at issue pursuant to section 552.149(b). *See id.* § 552.149(b). Based on your representations and our review, we find the district must withhold the information it marked under section 552.149(a) of the Government Code.

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.³ *Id.* § 552.130. Accordingly, the district must withhold the information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Accordingly, the district must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the district must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The district must withhold the dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the submitted iFile numbers under section 552.136(b) of the Government Code. The district must withhold the information it marked under section 552.149(a) of the Government Code. The district must withhold the information we marked under section 552.130 of the Government Code. The district must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must release the remaining information.⁴

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

³ 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).

⁴ We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/be

Ref: ID# 833562

Enc. Submitted documents

c: Requestor
(w/o enclosures)