



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2020

Ms. Hadassah Schloss
Director Open Government
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2020-30968

Dear Ms. Schloss:

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# 855265 (GLO ID# 20-0706).

The General Land Office (the "GLO") received a request for the names and contact information of individuals within the following seven lists: (1) current account holders in the Texas Veterans Land Program; (2) liens held by the Texas Veterans Land Board; (3) Veterans Housing Assistance loan applicants; (4) Veterans Home Improvement loan applicants; (5) current residents in the Texas Veterans Home Program facilities; (6) Texas Veterans Home Program applicants; and (7) Texas State Veterans Cemetery Program pre-registration applicants.¹ We understand you to claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you argue some of the requested information does not consist of public information subject to the Act pursuant to section 552.002(d) of the Government Code. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official

¹ You state the GLO 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).

business[.]” Gov’t Code § 552.002(a)(1). However, “protected health information” as defined by section 181.006 of the Health and Safety Code is expressly excluded from the Act’s definition of “public information.” *See id.* § 552.002(d). Section 181.006 of the Health and Safety Code provides, in relevant part, the following:

[F]or a covered entity that is a governmental unit, an individual’s protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines “covered entity” to include any person who

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You state the GLO is a covered entity for purposes of section 181.006 of the Health and Safety Code. You also state the GLO has designated the Texas State Veterans Homes (“TSVH”) Program as its health care component. However, in order to determine whether the GLO is a covered entity, we must address whether the GLO engages in the practice of “assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information.” *Id.* Section 181.001 states “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [“HIPAA”].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or

the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Id. Further, “health care” is defined as “care, services, or supplies related to the health of an individual.” *Id.* You inform us the information at issue, which contains the names of all current residents at each TSVH, consists of individually identifiable health information. Upon review, we find, the GLO, through its health care component TSVH, is a health care entity that is in the practice of collecting, using, and storing protected health information and, consequently, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Accordingly, pursuant to section 552.002(d) of the Government Code, we find the information you have indicated consists of “protected health information” not subject to the Act and the GLO need not release it in response to the present request for information.²

Next, we note the requestor seeks only the names and contact information of the individuals at issue. The GLO has submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the GLO is not required to release that information in response to the request.

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 section 437.232 of the Government Code, which provides as follows:

(a) In this section, “military personnel information” means a service member’s name, home address, rank, official title, pay rate or grade, state active duty orders, deployment locations, military duty addresses, awards and decorations, length of military service, and medical records.

(b) A service member’s military personnel information is confidential and not subject to disclosure under Chapter 552.

Id. § 437.232. Section 437.232 is contained in subchapter E of chapter 437 of the Government Code. Chapter 437 is titled “Texas Military” and subchapter E is titled “Texas Military Forces.” Upon review, we find section 437.232 only applies to military personnel records maintained by the Texas Military Forces. *See id.* § 437.001(14) (providing “Texas military forces” for purposes of chapter 437 mean the Texas National Guard, the Texas

² As we are able to make this determination, we need not address your arguments against disclosure of this information.

State Guard, and any other military forces under state law). We note the information you seek to withhold is contained in documents maintained by the GLO. Thus, section 437.232 is not applicable to the information at issue, and the GLO may not withhold it under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code.

Section 552.117(a)(11) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, as well as information that reveals whether the individual has family members. *See id.* § 552.117(a)(11). Upon review, we find you have failed to demonstrate the applicability of section 552.117(a)(11) to any of the remaining responsive information, and the GLO may not withhold it on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Section 552.1175 applies, in part, to “a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001.” *Id.* § 552.1175(a)(15). We note section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a “home address” for purposes of section 552.1175. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home). Further, we note the information at issue pertains to living and deceased individuals. We note the protection afforded by section 552.1175 generally does not lapse at death, as it is intended to protect the privacy of both the individual and the individual’s family members. Accordingly, to the extent the information we have marked pertains to individuals who are subject to section 552.1175(a) and who elect to restrict access to the information in accordance with section 552.1175(b), the GLO must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals whose information is at issue are not subject to section 552.1175(a) or do not elect to restrict access to their information in accordance with section 552.1175(b), then the information at issue may not be withheld under section 552.1175 of the Government Code. In addition, we conclude section 552.117(a)(15) of the Government Code is not applicable to the remaining responsive information, and the GLO may not withhold it on that ground.

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Further, we note, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Upon review, we find you have failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the GLO may not withhold any portion of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

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).³ *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the GLO must withhold the personal e-mail addresses of members of the public in the remaining responsive information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, pursuant to section 552.002(d) of the Government Code, the information you have indicated consists of protected health information not subject to the Act and the GLO need not release it in response to the present request for information. To the extent the information we have marked pertains to individuals who are subject to section 552.1175(a) and who elect to restrict access to the information in accordance with section 552.1175(b), the GLO must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The GLO must withhold the personal e-mail addresses of members of the public in the remaining responsive information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The GLO must release the remaining responsive information.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/gw

Ref: ID# 855265

Enc. Submitted documents

c: Requestor
(w/o enclosures)