



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 14, 2022

Ms. Rachael Foster
Assistant District Attorney
Lubbock County District Attorney's Office
P.O. Box 10536
Lubbock, Texas 79408

OR2022-07583

Dear Ms. Foster:

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# 935865 (ORR# 21-ORR-0357).

The Lubbock County Juvenile Justice Center (the "center") received a request for the personnel records of a named individual. You claim some information is not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the interests of a third party. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).² We have considered your arguments and reviewed the submitted information.

Initially, you indicate some of the submitted information, which you marked, is not responsive to the instant request. We note the request seeks the personnel records of a named individual. Further, the information at issue is contained within the personnel records. Thus, we find the information at issue is responsive to the request for information. Accordingly, we will consider the applicability of any exceptions to disclosure of this

¹ Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the center holds in its capacity as an employer.

² As of the date of this letter, we have not received any comments from the third party.

information. We will also consider the center's arguments against disclosure of the remaining information.

Next, the center asserts some of the submitted information is not subject to the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined 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. The center indicates the marked username information has no significance other than use as a tool for the maintenance, manipulation, or protection of public information. Based on this representation, and our review, we find this information, which you marked, does not constitute public information under section 552.002 of the Government Code. Therefore, the username information the center marked is not subject to the Act and need not be released to the requestor.

Next, you state portions of the submitted information are subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.³ The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. Consequently, education records that are responsive to a request for information under the Act should not be submitted to

³ A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-SDOE-FERPA.pdf>.

this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note FERPA applies only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See id.* § 99.33(a)(2). We further note the center is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” for purposes of FERPA). Moreover, you do not explain the submitted transcripts were transferred directly to the center from an educational institution. Therefore, we conclude the center may not withhold any portion of the transcripts at issue on the basis of FERPA.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 58.008 of the Family Code, provides, in part, as follows:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find the submitted information does not contain juvenile law enforcement records. Therefore, we find the center has failed to demonstrate the applicability of section 58.008 to the information at issue, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code

§ 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Therefore, the center must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated any portion of the remaining information at issue consists of CHRI for purposes of chapter 411 of the Government Code, and the center may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the center must withhold the fingerprint information you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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.” *Id.* § 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 v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the center must withhold the public employee's date of birth we marked under section 552.102(a) of the Government 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). This office has also 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. 600 (1992) (personal financial information includes choice of particular insurance carrier), 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). This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the center must withhold the information it marked, in addition to the information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). Upon review, the center may withhold the social security number at issue under section 552.147(a) of the Government Code.

Section 552.117(a)(10) of the Government Code excepts from public 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 juvenile justice program or facility, as those terms are defined by section 261.405 of the Family Code, regardless of whether the current or former employee complies with section 552.024 or 552.1175 of the Government Code. *Id.* § 552.117(a)(10). *See also* Fam. Code § 261.405(a)(2)(C) (defining “juvenile justice program” for purposes of section 261.405 as including a juvenile probation department). 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). Upon review, we find the center must withhold the information we marked pursuant to section 552.117(a)(10) of the Government Code. However, we find you have failed to demonstrate the remaining information is subject to section 552.117(a)(10), and the center may not withhold it on that basis.

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 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. Accordingly, the center must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, we find you have failed to demonstrate the remaining

information at issue, which we marked for release, consists of motor vehicle record information subject to section 552.130 and thus the center may not withhold it on that basis.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. DPS is an “agency” for purposes of chapter 730. *See* Transp. Code § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. You have not established the center compiles or maintains motor vehicle records; therefore, none of the remaining information is confidential under section 730.004 or 730.013, and the center may not withhold it under section 552.101 on either of those grounds.

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). Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the center must withhold the e-mail address it marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the username information the center marked is not subject to the Act and need not be released to the requestor. The center must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The center must withhold the public employee’s date of birth we marked under section 552.102(a) of the Government Code. The center must withhold the fingerprint information you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The center must withhold the information it marked, in addition to the information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The center may withhold the social security number at issue under section 552.147(a) of the Government Code. The center must withhold the information we marked pursuant to section 552.117(a)(10) of the Government Code. Except for the information we marked for release, the center must withhold the motor vehicle record information we marked, and you marked, under section 552.130 of the Government Code. The center must withhold the e-mail address it marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The center 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,

Sarah E. Reese
Attorney
Open Records Division

SER/ba

Ref: ID# 935865

Enc. Submitted documents

c: Requestor
(w/o enclosures)