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ATTORNEY GENERAL OF TEXAS

March 30, 2022

Ms. Carol McCord
Senior Legal Counsel, Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2022-09407

Dear Ms. McCord:

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# 936201 (Comptroller ID#: 37838).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for communications with the Texas Military Department (the "department") regarding particular subjects during a stated period of time. You state the comptroller's office will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.139 of the Government Code. Additionally, you state release of some of the submitted information may implicate the interests of the department. Accordingly, you state, and provide documentation showing, the comptroller's office notified the department of the request for information and of the right to submit arguments to this office. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We received comments from the department. We have considered the submitted arguments and reviewed the 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." *Id.*

¹ We assume that 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.

§ 552.101. This section 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. Upon review, we find the information you and the department marked consists of military personnel information maintained by the Texas military forces. *See id.* § 437.001(8) (providing “service member” for purposes of chapter 437 means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component), (13) (providing the department is the state agency charged with administrative activities in support of the Texas military forces), (14) (providing that “Texas military forces” for purposes of chapter 437 means the Texas National Guard, the Texas State Guard, and any other military forces under state law). Accordingly, the comptroller’s office must withhold the information you and the department marked under section 552.101 of the Government Code in conjunction with section 437.232 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 also 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. 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), 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 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).

You assert some of the remaining information is protected by common-law privacy. However, we note the information at issue pertains to individuals who will be de-identified and whose privacy interests are, thus, protected. Therefore, the comptroller's office may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining "access device"). You explain the employee identification numbers at issue are used to access employee payroll and benefit information. Accordingly, the comptroller's office must withhold the information you marked under section 552.136 of the Government Code.²

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.³ *See 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, of the Texas military forces, as that term is defined by [s]ection 437.001[.]" *Id.* § 552.1175(a)(15). Section 552.1175 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)*. Thus, to the extent the cellular telephone number we have marked pertains to an individual who is subject to section 552.1175(a)(15) of the Government Code, the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, and the cellular service is not paid for by a governmental body, the comptroller's office must withhold this information under section 552.1175 of the Government Code.

In summary, the comptroller's office must withhold the information you and the department marked under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code. The comptroller's office must withhold the information you marked under section 552.136 of the Government Code. To the extent the cellular telephone number we have marked pertains to an individual who is subject to section 552.1175(a)(15) of the Government Code, the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, and the cellular service is not paid for by a governmental body, the comptroller's office must withhold this information under section 552.1175 of the Government Code. The comptroller's office must release the remaining information.

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

Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 936201

Enc. Submitted documents

c: Requestor
(w/o enclosures)