



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2022

Mr. John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701

OR2022-22443

Dear Mr. Hargis:

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# 962885 (Ref. Nos. ORR22-036 and ORR22-038).

The Texas Board of Veterinary Medical Examiners (the "board") received two requests from different requestors for information pertaining to a specified type of individuals.¹ You state you have released some information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹ You state the board sought and received clarification of the information requested by the first requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² Although the board does not raise section 552.117 of the Government Code in its briefs, we understand the board to raise this exception based on its arguments. Further, although the board raises section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, section 552.024 permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. Gov't Code § 552.024. In addition, we understand the first requestor argues the board failed to comply with the requirements of section 552.301 of the Government Code regarding his request. *See id.* § 552.301(b), (e). Regardless of whether there was a section 552.301 violation, we note sections 552.102 and 552.117 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301 of the Government Code.

Initially, we note the first requestor asks questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume you have made a good-faith effort to do so.

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.” Gov’t Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 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). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. See *id.* at 348. Accordingly, the board must withhold the employee’s date of birth we marked under section 552.102(a) of the Government Code. However, upon review, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the board may not withhold any of it on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. See Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for information. See Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. You state the individual whose information is at issue has elected to keep the information at issue confidential pursuant to section 552.024 of the Government Code. Therefore, the board must withhold the information we marked under section 552.117(a)(1) of the Government Code. However, we find the board has failed to

demonstrate the applicability of section 552.117(a)(1) of the Government Code to any portion of the remaining information. Thus, the board may not withhold any portion of the remaining information under section 552.117(a)(1) of the Government Code.

In summary, the board must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code. The board must withhold the information we marked under section 552.117(a)(1) of the Government Code. The board 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 962885

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)