



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2022

Ms. Susan E. Tennyson
Open Records Attorney
Texas Department of Family and Protective Services
Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2022-32031

Dear Ms. Tennyson:

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# 975659 (DFPS Ref. No. R002551-073022).

The Texas Department of Family and Protective Services (the "department") received a request for certain personnel information pertaining to a named former employee. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

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 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. Additionally, this office has 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 information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to

demonstrate any of the remaining information it marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(16) of the Government Code, in part, exempts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former child protective services caseworker, adult protective services caseworker, or investigator for the department, regardless of whether the caseworker or investigator complies with section 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(16). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). Accordingly, the department must withhold the information it marked under section 552.117(a)(16) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information it marked under section 552.117(a)(16) of the Government Code. The department 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/pt

Ref: ID# 975659

Enc. Submitted documents

c: Requestor
(w/o enclosures)