



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 12, 2022

Ms. Kristi Godden  
Counsel for the La Joya Independent School District  
O'Hanlon, Demerath & Castillo  
808 West Avenue  
Austin, Texas 78701-2208

OR2022-38265

Dear Ms. Godden:

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# 989009 (Reference No. 22.052).

The La Joya Independent School District (the "district"), which you represent, received a request for all personnel records for a named district employee. We understand the district will withhold certain information pursuant to section 552.130(c) of the Government Code, social security numbers under section 552.147(a-1) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117,

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). The social security number of an employee of a school district in the custody of the district is confidential and may be redacted without the necessity of requesting a decision from this office. *Id.* § 552.147(a-1), (b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including personal e-mail addresses under section 552.137 of the Government Code and I-9 forms under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

and 552.136 of the Government Code.<sup>2</sup> We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>3</sup>

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.”<sup>4</sup> Gov’t Code § 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). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. Accordingly, the district must withhold the employee’s date of birth you marked under section 552.102(a) of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code excepts from public 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, 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, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 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), 600 at 9-10 (1992) (employee’s withholding allowance certificate, 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). We note the payroll deductions for federal

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<sup>2</sup> Although you do not cite to sections 552.117 and 552.136 of the Government Code in your brief, we understand you to raise these sections based on your markings.

<sup>3</sup> We assume 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.

<sup>4</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

withholding tax are protected by common-law privacy and must be withheld under section 552.101, but the payroll deductions for social security, mandatory retirement, and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See, e.g.*, ORDs 600 at 9-12 (participation in TexFlex), 545 at 3-5; *see also* Attorney General Opinion GA-0572 at 4 (2007) (public employee's net salary protected by common-law privacy, but gross salary is not).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>6</sup> However, it is not clear whether the listed payroll deductions and benefits reflect mandatory participation by the employee at issue or are the employee's voluntary financial decisions. Thus, to the extent this information reflects the employee's voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the district, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employee's mandatory participation in the district's retirement program or benefits paid by the district, the information at issue may not be withheld on that basis. Further, we find the district has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical

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<sup>6</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has determined the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find you have failed to demonstrate any of the remaining information consists of medical records subject to the MPA. Therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code 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. Gov't Code § 552.1175. We note section 552.1175 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.1175 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. *Cf.* 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 information we marked contains personal information of individuals who may be among the types of individuals listed in section 552.1175(a). Accordingly, to the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the district must withhold the information we marked under section 552.1175 of the Government Code; however, the district may only withhold the cellular telephone numbers if the cellular telephone service is not paid for by a governmental body.<sup>7</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and 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, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.024, .024(a-1), .117(a)(1). 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 "family member" has meaning assigned by Fin. Code § 31.006(d)). We also note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6 (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We further note a post office box number is not a "home address" for purposes of section 552.117(a). *See* ORD 622 at 4. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under

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<sup>7</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Upon review, we find the employee's name, employee identification numbers, and the post office box numbers you marked do not consist of information that is protected by section 552.117 of the Government Code. This information, which we marked for release, may not be withheld on that basis. Accordingly, with the exception for the information we marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you marked and the additional information we marked under section 552.117(a)(1) of the Government Code.

Section 552.136 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"). Upon review, we find you have not explained the employee identification numbers you marked consist of credit card, debit card, or charge card numbers, or are an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the employee identification numbers you marked, and the district may not withhold them on this ground.

In summary, the district must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code. The district must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent the information at issue reflects the employee's mandatory participation in the district's retirement program or benefits paid by the district, the information at issue may not be withheld on that basis. To the extent the information at issue relates to individuals who are subject to section 552.1175 of the Government Code and who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the district must withhold the information we marked under section 552.1175 of the Government Code; however, the district may only withhold the cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. With the exception of the information we marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you marked and the additional information we marked under section 552.117(a)(1) of the Government Code. The district 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/eb

Ref: ID# 989009

Enc. Submitted documents

c: Requestor  
(w/o enclosures)