



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 5, 1993

Honorable Keith A. Barton  
Chairman  
Taylor County Bail Bond Board  
450 Pecan Street  
Abilene, Texas 79602-1692

OR93-600

Dear Judge Barton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 20278.

The Bail Bond Board of Taylor County (the "board") has received a request for the license application of a currently licensed bail bondsman. You claim the requested information is excepted from required disclosure under sections 552.101, 552.104 and 552.110 of the Open Records Act.<sup>2</sup>

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<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>We note that in a letter to this office dated May 24, 1993, the requestor claims that the Bail Bond Board of Taylor County is not authorized to request an attorney general opinion pursuant to section 402.042 of the Government Code. Section 402.042 of the Government Code requires the attorney general, upon request of statutorily specified persons, to render written opinions construing questions affecting the public interest or concerning the official duties of the requesting person. Open records requests, however, are governed by chapter 552 of the Government Code. Under section 552.301 of the Government Code, a "governmental body" that has received a request for information under the Open Records Act must request a decision from the attorney general under certain circumstances. Upon receiving a request for an open records decision from a "governmental body," the attorney general is required to render a decision determining whether the requested information is public or within one of the act's exceptions to disclosure. Gov't Code § 552.306. The Bail Bond Board of Taylor County is a "governmental body" under the act. *See id.* § 552.003(a)(10).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former section 3(a)(1) of article 6252-17a, V.T.C.S.).

Although financial information about an individual may be highly intimate and embarrassing to a reasonable person, Open Records Decision No. 373 (1983) at 3, the information at issue here is of legitimate concern to the public, 540 S.W.2d at 685. The requested information was submitted to the board pursuant to V.T.C.S. article 2372p-3, the statute governing the licensing and regulation of bail bondsmen in the state of Texas, which provides that "[t]he business of executing bail bonds is declared to be a business affecting the public interest." V.T.C.S. art. 2372p-3, § 1. We believe the public has a legitimate interest in the qualifications of a bail bondsman to be licensed under this provision. *See Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.--El Paso 1980, no writ) (noting that act creating county bail bond boards declares that the business of executing bail bonds affects the public interest and that disclosure of personal financial statement would not adversely affect any right of privacy); Open Records Decision Nos. 215 (1978); 157 (1977) (the contents of licensing files are not ordinarily excepted by a right of privacy). *Cf.* Open Records Decision No. 542 (1990) (information about qualifications of a public employee is of legitimate concern to the public). Accordingly, you may not withhold the requested information under section 552.101 of the Government Code.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. It is not designed to protect the interests of private parties submitting information to a governmental body. *Id.* at 8-9. A governmental body must show some actual or specific competitive harm in a particular competitive situation. Open Records Decision No. 541 (1990) at 4. General allegations or remote possibilities that an unknown competitor will gain an unfair advantage are not sufficient to protect information under section 552.104. *Id.* Once the bidding process has ceased and a contract has been awarded, section 552.104 will generally not except information

submitted with a bid or the contract itself from disclosure. Open Records Decision No. 514 (1988). You do not claim the requested information implicates the interests of the board in a competitive bidding situation. Accordingly, you may not withhold the requested information under section 552.104 of the Government Code.

Section 552.110 excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Pursuant to section 552.305(b) of the Government Code, this office notified Mr. Tommy Meyer of the third party request for information from the board and offered him an opportunity to address the availability of the records relating to it. It is not apparent from Mr. Meyer's letter that he claims that the information is excepted under the common law as a trade secret. If he intended to do so, he has not made the requisite *prima facie* case.<sup>3</sup> In order for information to be excepted from required public disclosure as "commercial or financial information," the information must be privileged or confidential under the common or statutory law of Texas. Open Records Decision No. 592 (1991).

Because we have already determined that the information is not excepted under common-law privacy and we are aware of no other common-law doctrine or statute

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<sup>3</sup>The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939). *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). A trade secret

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939). There are six factors listed by the Restatement which should be considered when determining whether information is a trade secret:

(1) the extent to which the information is known outside of [the company's] business; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and to [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Id.* The governmental body or the company whose records are at issue must make a *prima facie* case for exception as a trade secret under section 552.110. See Open Records Decision No. 552 (1990) at 5.

making the information confidential, you may not withhold the requested information under section 552.110 of the Government Code. *See also Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.--El Paso 1980, no writ) (affirming district court's ruling that disclosure of personal financial records filed with county bail board in connection with application for bail bondsman license was not precluded by any exceptions to the Open Records Act or by a constitutional right of privacy). Accordingly, the information must be released to the requestor.<sup>4</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/LBC/rho

Ref.: ID# 20278

cc: Mr. Tommy R. Meyer  
3648 South 20th  
Abilene, Texas 79602  
(w/o enclosures)

Mr. D. Wade Hayden  
John M. Killian & Associates  
445 West Sunset Road  
San Antonio, Texas 78209  
(w/o enclosures)

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<sup>4</sup>We note that Mr. Meyer claims that the requested information was submitted with the expectation that it would be confidential. He states that "when [he] submitted the information [he] expected confidentiality as [he] had been told." Information is not confidential under the Open Records Act simply because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987). *Cf.* Open Records Decision No. 263 (1981) (city ordinance may not prohibit the public from receiving copies of statements filed pursuant to a city financial disclosure ordinance). A governmental body may not keep information confidential absent express statutory authority to do so. Open Records Decision No. 478 (1987) at 2.