



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2004

Ms. Noelle C. Letteri
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2004-0481

Dear Ms. Letteri:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194850.

The Texas General Land Office ("GLO") received a request for lease agreements with the Texas Department of Criminal Justice ("TDCJ") for property purchased in Burleson County; records of sales and contracts with developers who purchased land, previously used as farmland by TDCJ, from the GLO; and data showing the total land transaction activity and income from 1985 to the present. You state that the GLO has released part of the requested information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

This office has determined that the personal financial information of an individual is generally excepted from required public disclosure under common-law privacy, but that the

essential facts about a financial transaction between an individual and a governmental body are subject to a legitimate public interest. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy, but information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is protected under privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to governmental body about individual and basic facts regarding particular financial transaction between individual and governmental body).

We note that common-law privacy protects the feelings and sensibilities of individuals, rather than the interests of business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no common-law privacy interest in its financial information), 192 (1978); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). In this instance, we note that the information that you seek to withhold under the common-law right to privacy consists of financial information of business entities. Accordingly, we determine that no portion of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We note that the submitted documents contain information that is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

The GLO must withhold the account number information that we have marked in the submitted documents pursuant to section 552.136 of the Government Code.

In summary, we have marked the account number information that the GLO must withhold pursuant to section 552.136 of the Government Code. The remainder of the requested information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 194850

Enc: Submitted documents

c: Mr. Jay Root
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(w/o enclosures)