ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2005

Mr. Sterling Harmon
County Attorney
County of Gaines
P.O. Box 1927
Seminole, Texas 79360

OR2005-11333

Dear Mr. Harmon:

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# 238434.

The Gaines County Sheriff's Department (the "department") received a request for a list of all bail bond sureties and their annual financial statements filed with the department. You state that you have released the requested list of bail bond sureties. You claim, however, that the requested financial statements 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, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common law privacy. Common law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has previously determined that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary

sensibilities." Open Records Decision No. 373 at 3. However this office also found that a legitimate public interest can exist in such financial information. *Id.*

In this instance, you state that the submitted information consists of financial statements of bail bond sureties that were filed with the department pursuant to article 17.141 of the Code of Criminal Procedure, which requires that, in a county where a bail bond board regulated under chapter 1704 of Occupations Code does not exist, an eligible bail bond surety must file an annual sworn financial statement with the sheriff. *See* Crim. Proc. Code art. 17.141. Based on our review of your arguments and the information at issue, we find that, although the submitted information arguably satisfies the first prong of the *Industrial Foundation* test, we believe the public has a legitimate interest in this type of information. *Cf. Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.—El Paso 1980, no writ) (constitutional right of privacy does not protect personal financial information filed with county bail bond board as required to obtain a license to act as bondsman; recognizing public interest in such information). We therefore conclude that none of the submitted information may be withheld under section 552.101 in conjunction with common law privacy.

We note, however, that the submitted information includes a Texas driver's license number. Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"[1] Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license number we have marked pursuant to section 552.130.

We further note that the submitted information contains bank account and credit card numbers excepted from disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding 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." Gov't Code § 552.136. An access device number is one that 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." *Id.* We have marked the bank account and credit card numbers that the department must withhold pursuant to section 552.136.

The submitted information also includes social security numbers. Section 552.147 of the Government Code[2] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the

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[1]This office 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).

[2]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

department must withhold the social security numbers contained in the submitted information under section 552.147.[3]

Lastly, we note that a portion of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code. The bank account and credit card numbers we have marked must be withheld under section 552.136 of the Government Code. Social security numbers contained in the submitted information must be withheld under section 552.147 of the Government Code. The remaining information must be released, but any copyrighted material may only be released in accordance with copyright law.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

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[3]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

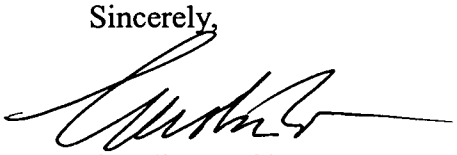
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 Office of the Attorney General 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. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 238434

Enc. Submitted documents

c: Mr. Pascual Q. Olibas
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(w/o enclosures)