



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2009

Ms. Ashley R. Allen
Staff Attorney
Administrative Law Section
General Land Office
P. O. Box 12873
Austin, Texas 78711-2873

OR2009-01758

Dear Ms. Allen:

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# 334649.

The Texas General Land Office (the "GLO") received a request for a specified Texas Veterans Land Board ("VLB") file. Although you take no position with regard to the public availability of the requested information, you state it may implicate the proprietary interests of two named individuals, the City of Wharton (the "city"), and Ballard Exploration Company ("Ballard"). You state, and provide documentation showing, that you notified the named individuals, their attorney, and the city of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). You inform us that Ballard consented to release of its own information; therefore you have released its information to the requestor. We have received comments from a representative of the named individuals, who claims the submitted information is excepted from disclosure under sections 552.101 and 552.136 of

the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has not received correspondence from the city. Thus, we have no basis to conclude that release of any portion of the submitted information would implicate its proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990).

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. The named individuals claim that some of the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test. For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545 (1989), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to a public body about an individual and basic facts regarding a particular financial transaction between the individual and the public body). However, this office has also determined the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 523 at 3-4 (certain financial information contained in loan files of veterans participating in VLB programs), 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (deferred compensation plan), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files).

The named individuals state their personal financial information was "provided as part of the [VLB] loan application process and must be withheld under section 552.101 and the

¹Although the named individuals also raise section 552.110 of the Government Code, they have provided no arguments in support of withholding the submitted information under this section. Therefore, we do not address the applicability of section 552.110 to the submitted information. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

doctrine of common-law privacy.” Upon review, we agree some of the submitted documents contain personal financial information that is highly intimate and embarrassing and not of legitimate concern to the public. Therefore, the GLO must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information relates to the financial transaction between the named individuals and the VLB; therefore, there is a legitimate public interest in the remaining information. *See* ORD 523 at 3-4. Accordingly, no portion of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Next, we note the remaining information includes tax forms. Section 552.101 also encompasses information made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Accordingly, the tax forms we have marked constitute tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

The named individuals also raise section 552.136 of the Government Code. Section 552.136(b) states “[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”). We have marked the bank account and routing numbers and the insurance policy numbers in the remaining information that must be withheld pursuant to section 552.136 of the Government Code.

We note the remaining information contains a DD-214 form. Section 552.140 of the Government Code provides that a military veteran’s DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order.² *See id.* § 552.140(a), (b). We have marked the submitted DD-214 form. However, you do not inform us when the GLO came into the possession of this form. Therefore, the GLO must withhold the DD-214 form under section 552.140 if it came into the possession of the GLO on or after September 1, 2003. If the form was received by the GLO before September 1, 2003, then the GLO may not withhold it pursuant to section 552.140.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Finally, we note that some of the remaining information is 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 GLO must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the marked tax forms pursuant to section 552.101 in conjunction with federal law. The GLO must withhold the information we have marked pursuant to section 552.136 of the Government Code. If the DD-214 form we have marked came into the possession of the GLO on or after September 1, 2003, the form must be withheld pursuant to section 552.140 of the Government Code. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.³

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/eb

³We note the information being released contains social security numbers. 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.

Ref: ID# 334649

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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