



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-18019

Dear Ms. Alexander:

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# 365306.

The Texas Department of Transportation (the "department") received a request for information pertaining to seven specified signs.¹ You state some of the requested information has been released. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.110, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You claim the identity of the landowners contained within the submitted permit applications is protected by common-law privacy. 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. Gov't Code § 552.101. Common-law privacy protects information that (1) contains highly intimate or

¹You state the department sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We assume that 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.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. Prior decisions of this office have determined that personal financial information not related to a transaction between an individual and a governmental body is generally not subject to a legitimate public interest and is therefore protected by common-law privacy. *See* Open Records Decision No. 600 (1992). However, this office has also determined that the essential facts about a financial transaction between an individual and a governmental body generally are subject to a legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 523 (1989). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

You contend the identifying information of landowners in the submitted permit applications constitutes personal financial information unrelated to a financial transaction with a governmental body. Upon review, we agree that information identifying the landowners who are individuals is personal financial information that is not subject to a legitimate public interest. However, the doctrine of common-law privacy protects the privacy interests of individuals, not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Accordingly, the information identifying a business organizations as a landowner, which we have marked for release, is not protected under common-law privacy. The department must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³

You also raise section 552.110 of the Government Code for the information we have marked for release; however, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. As we have received no arguments from any third party seeking to withhold any portion of the information at issue under section 552.110, we do not address the applicability of section 552.110 to this information. *See* Gov't Code § 552.305.

Next, you raise section 552.136 of the Government Code, which states “[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.” *Id.* § 552.136. Accordingly, the department must withhold the checking

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

account and routing number you have marked under section 552.136 of the Government Code.⁴

In summary, except for the information we marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you marked under section 552.136 of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 365306

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.