



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2010

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401

OR2010-02010

Dear Ms. Jimenez:

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# 369738.

The Nueces County Clerk's Office (the "county") received two requests from the same requestor seeking a list of all open liability cases including bond forfeitures as well as the following information pertaining to a named individual d/b/a A-1 Bail Bonds ("A-1"): (1) all original and renewal applications submitted to the county by A-1; (2) the date A-1 was approved by the county's Bail Bond Board; (3) the last day A-1 wrote a bond; and (4) the deed held with the county for A-1. You state the county does not have the requested list of open liability cases.¹ You also state the county will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also state release of some of the requested information may implicate the proprietary interests of A-1. Thus, pursuant to section 552.305 of the Government Code, you notified A-1 of the request and of its right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990)

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Although A-1 has submitted a brief to this office that mentions sections 552.110, 552.113, and 552.131 of the Government Code, A-1 has not provided any arguments explaining those sections' applicability to the information at issue. Therefore, we have no basis to conclude this third party has protected proprietary interests in the submitted information. *See* Gov't Code § 552.305(b); ORD 542 at 3; *c.f.* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Consequently, the county may not withhold any submitted information on the basis of any proprietary interest A-1 may have in it.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutes that make information confidential. You assert the submitted W-9 form is confidential under section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), dismissed in part, aff'd in part, vacated in part, and remanded, 993 F.2d 1111 (4th Cir. 1993). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). W-9 forms are requests for taxpayer identification numbers, and do not fall within the definition of "tax return information." As such, the county may not withhold the submitted W-9 form under section 552.101 in conjunction with section 6103 of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release the biometric identifiers of an individual except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier"), .002 (prescribing the manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in

possession of governmental body exempt from disclosure under the Act). You raise sections 560.001, 560.002, and 560.003 for the submitted information. Upon review, however, the submitted information does not contain any biometric identifiers. Therefore, the county may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *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 generally meets the first prong of the common-law privacy test. *See generally* Open Records Decision No. 600 (1992). However, 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).

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village*, Tex., 765 F.2d 490 (5th Cir. 1985)).

The information you seek to withhold under section 552.101 in conjunction with common-law and constitutional privacy consists of detailed financial statements of the named individual provided to the county for the purpose of acquiring or renewing his license as a bail bondsman. Thus, because the financial information at issue pertains to a transaction between A-1 and a governmental body, it is generally of legitimate public interest for purposes of common-law privacy. *See* ORD 600 (legitimate public interest exists in facts about a financial transaction between individual and governmental body). Additionally, we find the public's need to know information pertaining to an individual's qualifications for licensure as a bail bondsman generally outweighs an applicant's privacy interests in such information. *See Apodaca v. Montes*, 606 S.W.2d 734, 735-36 (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 license to act as bondsman). Further, you have not shown how personal financial information in the context of bail bondsman licensure comes within a zone of privacy protected by the constitution. *See id.* at 736. We therefore conclude the public interest in the submitted information overcomes any privacy interest that may exist therein, and none of the submitted financial information may be withheld under section 552.101 in conjunction with common-law or constitutional privacy.

Section 552.136 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(b). Section 552.136(a) defines “access device” as “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 . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we conclude the bank account numbers, routing number, insurance policy numbers, and insurance account number we marked are access device numbers for purposes of section 552.136. However, you have failed to demonstrate how the check number you highlighted is an access device numbers for purposes of section 552.136; therefore it may not be withheld. Thus, we conclude the county must withhold the bank account numbers, routing number, insurance policy numbers, and insurance account number we marked under section 552.136 of the Government Code.² As you raise no other exceptions to disclosure, the remaining information must be released.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

²We 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 a bank account number and bank routing number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released includes a social security number. 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.

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,

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

Bob Davis
Assistant Attorney General
Open Records Division

RSD/sdk

Ref: ID# 369738

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Joe B. Garza
212 North Rachal
Sinton, Texas 78387
(w/o enclosures)