



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2010

Mr. Patrick Fortner  
Acting Executive Director  
Texas Residential Construction Commission  
P.O. Box 13509  
Austin, Texas 78711-3509

OR2010-04043

Dear Mr. Fortner:

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# 374682 (TRCC PIR No. 3287).

The Texas Residential Construction Commission (the "commission") received a request for all records regarding complaints, disputes, license applications, registration, and criminal history pertaining to a named company and named individual.<sup>1</sup> You state some of the requested information does not exist.<sup>2</sup> You also state you have released some of the requested information to the requestor. You claim that portions of the submitted information are exempted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor agreed to allow the commission to redact e-mail addresses, social security numbers, credit and debit card numbers, and Texas driver's license information from the requested information. Thus, any such information is not responsive

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<sup>1</sup>We note that the commission asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *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 Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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. This section incorporates the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. A compilation of an individual’s criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. You claim that the information you have marked within Exhibit E is confidential under section 552.101 and common-law privacy. Upon review, we find that portions of the submitted information, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the commission must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information you seek to withhold was provided to the commission by an applicant. Thus, this information is not criminal history information compiled by the commission and may not be withheld under section 552.101 and common-law privacy.

We note you seek to withhold the credit card expiration dates you have marked in the remaining information under section 552.136 of the Government Code. This section provides

(a) “[A]ccess 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 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 [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.

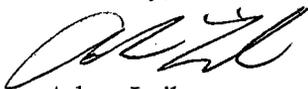
Gov't Code § 552.136(a), (b). Upon review, we find you have not provided any arguments explaining how the marked credit card expiration dates, whether used alone or in conjunction with another device, may be used to obtain money, goods, or services, or to initiate a transfer of funds. Consequently, we find you have failed to demonstrate how the marked credit card expiration dates constitute "access device numbers" for purposes of section 552.136. Therefore, the commission may not withhold the marked credit card expiration dates under section 552.136 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining responsive information must be released to the requestor.

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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 374682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)