ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2010

Mr. Robert N. Bland, IV
District Attorney
Ector County
300 North Grant, Room 305
Odessa, Texas 79761

OR2010-07142

Dear Mr. Bland:

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# 379726.

The Ector County Bail Bond Board (the "board") received a request for the complete file of a specified bail bondsman. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes notices and minutes of meetings of the board. Notices and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the meeting notices and minutes we have marked must be released.

Next, we note that the remaining information contains court-filed documents. These documents are subject to section 552.022(a)(17) of the Government Code, which provides that "information that is also contained in a public court record" is "public information and not excepted from required disclosure under this chapter unless [it is] expressly confidential under other law[.]" Gov't Code § 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We note that while you also raise section 552.101 in conjunction with common-law privacy for portions of the documents at issue, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the board may not withhold the submitted court-filed documents under section 552.101 in conjunction with common-law privacy or under section 552.103. We note, however, that the court-filed documents contain fingerprints. Therefore, we will address section 552.101 for that information. We note portions of the court-filed documents contain information subject to section 552.130, which is also "other law" for purposes of section 552.022.[1] Thus, we will also address this exception for the court-filed documents. Furthermore, we will address your arguments under section 552.103 and section 552.101 in conjunction with common-law privacy for the information not subject to section 552.022.

Next, we address your argument under section 552.103 of the Government Code for the information not subject to section 552.022. Section 552.103 provides in part:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
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> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

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

Gov't Code § 552.103(a), (c). The board has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the board received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The board must meet both prongs of this test for information to be excepted under section 552.103(a).

You state the remaining information relates to pending civil litigation to which the Ector County Treasurer (the "treasurer") is a party. We note that the board is not a party to this litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with such a representation. Further, although you state the treasurer is a party to the litigation, the submitted information reflects that the litigation is between private parties and does not involve the treasurer as a named party. Thus, you have not demonstrated how the treasurer is a party to the litigation. Accordingly, we conclude none of the information at issue may be withheld under section 552.103.

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. Section 552.101 encompasses 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 demonstrated. *Id.* at 681-82. The types of information considered intimate or 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. 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).

We understand you to assert that portions of the remaining information not subject to section 552.022 are excepted from disclosure under section 552.101 in conjunction with

common-law privacy. The remaining information includes detailed financial statements of the named individual provided to the board for the purpose of acquiring or renewing her license as a bail bondsman. 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. *See* ORD 600 (legitimate public interest exists in facts about a financial transaction between individual and governmental body); *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). Further, we find that no portion of remaining non-financial information is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the remaining information is confidential under common-law privacy, and the board may not withhold it on that basis.

We note the court-filed documents subject to section 552.022(a)(17) contain fingerprints. Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code which provides a governmental body may not release fingerprints except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing 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). We have no indication section 560.002 permits the disclosure of the submitted fingerprints. Therefore, the board must withhold the information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

We note that the remaining information contains the tax return information of the specified bail bondsman. Section 552.101 encompasses information made confidential by other statutes, including section 6103(a) of title 26 of the United States Code. This office has held that title 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of . . . income." *See* 26 U.S.C. § 6103(b)(2)(A). 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), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the board must withhold the tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

The remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration

issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). Accordingly, the board must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, we note the remaining information contains information subject to section 552.136 of the Government Code. 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." *Id.* § 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, and insurance policy number we have marked are access device numbers for purposes of section 552.136. Thus, the board must withhold the this marked information under section 552.136 of the Government Code.

In summary, the board must release the submitted public meeting notices and minutes we have marked in accordance with the Open Meetings Act. The board must withhold (1) the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code; (2) the tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (3) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; and (4) the bank account numbers, routing number, and insurance policy number we have marked under section 552.136 of the Government Code.[2] 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.

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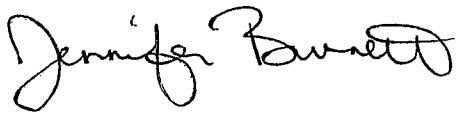
[2]We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information including: a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; a Texas driver's license number under section 552.130 of the Government Code; and a bank account number, routing number, and insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

[3]We note the information being released includes 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. Gov't Code § 552.147(b).

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 379726

Enc. Submitted documents

c: Requestor
(w/o enclosures)