



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2010

Ms. Lisa Calem-Lindström
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2010-07368

Dear Ms. Calem-Lindström:

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# 380269.

The Texas Facilities Commission (the "commission") received a request for the signed wage rate notifications for all employees of a specified company requested by the commission at a specified time. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]" Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681-82. The type 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding

voluntary benefits programs, among others, are protected under common-law privacy). 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).

Upon review, the submitted wage rate notification records pertain solely to transactions between Calvin's Electric and G & R Electrical Construction, Inc. and their employees. You inform us that Calvin's Electric and G & R Electrical Construction, Inc. are subcontractors on a state construction project. You state that the commission, which awarded the construction contract, requires wage rate notifications be sent to and signed by workers on state construction projects. Based on your representation and our review, we conclude the wage information you have marked on the submitted notifications is personal financial information not relating to a financial transaction between these individuals and the commission, and there is no legitimate public interest in release of this information at this time. Accordingly, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information at issue constitutes personal financial information. Therefore, none of the remaining information is confidential under the doctrine of common-law privacy, and it may not be withheld under section 552.101 of the Government Code on that basis.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 380269

Enc. Submitted documents

c: Requestor
(w/o enclosures)