ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2011

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78765-4087

OR2011-02765

Dear Ms. Cohen:

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# 408729 (ORA #10-2704).

The Texas Department of Public Safety (the "department") received a request for a copy of a specified investigation involving two named individuals. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the privacy or proprietary interests of the two named individuals and CSIdentity Corporation ("CSIdentity"). Accordingly, you state, and provide documentation showing, you notified the two named individuals and CSIdentity of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the representative of the first named individual and from the representative of both CSIdentity and the second named individual. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The representatives of the named individuals and CSIdentity argue the submitted information is excepted from disclosure under section 552.108 of the Government Code. As this

exception is potentially the most encompassing, we address these arguments first. We note that section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests, as distinguished from exceptions that are intended to protect the interests of third parties, and may be waived by the governmental body. *See* Open Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As the department does not seek to withhold any information pursuant to section 552.108, none of the submitted information may be withheld on this basis.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The representatives of the named individuals and the department raise section 552.101 in conjunction with the doctrine of common-law privacy. Common-law privacy 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 established. *Id.* at 681-82. We note that common-law privacy protects the interests of individuals, not those of corporate and other business entities. *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 United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy).

This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)). Determinations under common-law privacy must be made on a case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983); *Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case).

The submitted information consists of the department's investigation of an alleged illegal transfer of stock to a public servant, a violation of Penal Code section 36.08. Upon review of the submitted arguments and the information at issue, we have marked portions of the remaining information that reveal personal financial information that does not relate to a financial transaction between an individual and a governmental body. We find this information is highly intimate or embarrassing and of no legitimate public interest. *See*

ORD 455. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining financial information pertains directly to the crime alleged in the investigation and forms the basis of the criminal accusation. Thus, this information is of legitimate public interest and is not subject to common-law privacy. *See Lowe*, 487 F.3d at 250. Additionally, the representatives of the named individuals and CSIdentity and the department have failed to explain how any of the remaining information is highly intimate or embarrassing. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Next, we consider the arguments against disclosure of portions of the remaining information under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); Open Records Decision No. 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).

CSIdentity and the representatives, on behalf of the named individuals as shareholders of CSIdentity, assert portions of the remaining information are excepted from disclosure under section 552.110(b) of the Government Code because release of the information at issue would cause CSIdentity substantial competitive harm. Upon review, we find that CSIdentity has established that some of the information pertaining to the alleged sale of its stock and the infusion of outside capital, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Therefore, the department must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find that CSIdentity and the representatives of the named individuals have made only conclusory allegations that the release of any of the remaining information would result in substantial damage to the company's competitive position. Thus, CSIdentity and the representatives have failed to demonstrate that substantial competitive injury would result from the release of any of the remaining information at issue. *See* Open Records Decision No. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, none of the remaining information may be withheld under section 552.110(b).

The representative for the first named individual contends the first individual's home address, home telephone number, and social security number are subject to section 552.117

of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note that the protection of section 552.117 is applicable only to information that a governmental body holds in its capacity as an employer. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers); *see also id.* § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the first named individual is not a current or former employee of the department. Further, the first individual's information is contained in a law enforcement record. Accordingly, this information is not held by the department in its capacity as an employer. Therefore, the department may not withhold any portion of the remaining information under section 552.117(a)(1).

The representative of the first individual asserts some of the remaining information is excepted under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license or driver's issued by a Texas agency is excepted from public release.[1] Gov't Code § 552.130(a)(1), (2). We agree the department must withhold the Texas driver's license number we have marked under section 552.130.

The remaining information contains a social security number subject to section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[2] *Id.* § 552.147(a). Accordingly, the department may withhold the social security number we have marked under section 552.147 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.110(b) of the Government Code, and section 552.130 of the Government Code. The department may withhold the marked social security number under section 552.147 of the Government Code. The remaining information must be released.

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[1]We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

[2]We note 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 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,

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 408729

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Schuyler Marshall
The Terrill Firm, P.C.
810 West 10th Street
Austin, Texas 78701
(w/o enclosures)

Mr. Gary E. Zausmer
Winstead
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(w/o enclosures)