



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2011

Mr. R. Brooks Moore
Managing Counsel - Governance
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845

OR2011-10174

Dear Mr. Moore:

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# 424033 (TAR 11.071).

Tarleton State University (the "university") received a request for a contract between 360 Ag Management, L.L.C. and the university for operational services of a new dairy center, bids by other operators for operational services, the cost and selling price of any dairy cattle owned by the university during a specified time period, and any records of repairs being made on the dairy facility. You state the university is providing some of the requested information to the requestor. Although you take no position with respect to the public availability of the submitted information, you state that the proprietary interests of a third party might be implicated. Accordingly, you notified Alliance Holsteins ("Alliance") of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by Alliance. We have considered its arguments and reviewed the submitted information.

We understand Alliance to raise section 552.101 of the Government Code in conjunction with common-law privacy. 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 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 600 (1992), 545 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to be generally those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual’s mortgage payments, assets, bills, and credit history is excepted from disclosure under the common-law right to privacy). Further, we note common-law privacy protects the interests of individuals, not those of business and governmental 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). Upon review, we find a portion of the submitted information, which we have marked, constitutes personal financial information of individuals that is not related to a transaction between an individual and a governmental body. This personal financial information is intimate or embarrassing and of no legitimate public interest. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining financial information Alliance seeks to withhold relates to the financial information of a business. Accordingly, the university may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Next, we understand Alliance to raise section 552.147 of the Government Code and assert the remaining information contains social security numbers. Section 552.147 governs the release of social security numbers under the Act and provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. We note the remaining information does not contain any social security numbers. Therefore, none of the remaining information may be withheld under section 552.147 of the Government Code.

In summary, university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,


Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 424033

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)