



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Mr. James R. Evans, Jr.
Counsel for Wood County Appraisal District
Hargrove & Evans, L.L.P.
Building 3, Suite 400
4425 Mopac South
Austin, Texas 78735

OR2011-13258

Dear Mr. Evans:

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# 429877.

The Wood County Appraisal District (the "district"), which you represent, received a request for confirmation of the tax deferral in place on a specified piece of property. You claim the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You also state you have notified the individual whose interests are at issue of the request for information and of her right to submit arguments to this office as to why the submitted information should not be released. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of

legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision No. 455 (1987)* (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). This office has also found financial information that does not relate to a financial transaction between an individual and a governmental body ordinarily satisfies the first requirement of the test for common-law privacy. For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See Open Records Decision Nos. 545 (1990), 523 (1989); see also 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 are protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See ORDs 600 at 9* (information revealing employee participation in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find the submitted information, including information available to the public on the internet, is of legitimate public interest or is not highly intimate or embarrassing. Therefore, the district may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

Next, you claim the submitted information is excepted from disclosure under section 552.102 of the Government Code and the Texas Supreme Court's ruling in *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.* No. 08-0172, 2010 WL 4910163, at *5 (Tex. Dec. 3, 2010). Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test, discussed above. However, the Texas Supreme Court recently expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Comptroller*, No. 08-0172, 2010 WL 4910163, at *5. The supreme court then considered the applicability of section 552.102, and held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Id.* at *10. Having carefully reviewed the submitted information, we find none of the information is excepted under section 552.102(a) of the Government Code. As you raise no additional exceptions, the submitted 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# 429877

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)