



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 1, 2012

Mr. Wm. Keith Davis
Hay, Wittenburg, Davis, Caldwell & Bale, L.L.P.
P.O. Box 271
San Angelo, Texas 76902-0271

OR2012-04822

Dear Mr. Davis:

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# 449535 (File No. 92-148).

Tom Green County (the "county"), which you represent, received 44 requests from the same requestor for payroll records pertaining to a named individual, e-mails and other correspondence between several named individuals during various time periods concerning certain subjects, and all material prepared, processed, or otherwise worked on by county employees or former employees during a specified time period on behalf of certain named organizations.¹ You state you will release some of the requested information. You state you will redact some information under sections 552.117(a)(1), 552.130(c), 552.136(c),

¹You state, and provide documentation showing, the county sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *See also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).² You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also state that release of the submitted information may implicate the interests of a third party, the San Angelo Area Foundation (the “foundation”). Accordingly, you state, and provide documentation showing, the county notified the foundation of the requests for information and of its right to submit arguments stating why the submitted 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); 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 considered the exceptions you claim and reviewed the submitted representative sample of information.³ We have also received and considered arguments submitted by an attorney for the foundation.⁴

Initially, we address the foundation’s contention that portions of the submitted information are not subject to the Act. The Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002(a) provides that “public information” consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas Legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Gov’t Code § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684. Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2).

³We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

⁴We note that we only rule on the information submitted by the county for our review. *See* Gov’t Code § 552.301(e)(1)(D). Therefore, we do not address the additional information submitted by the foundation.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The foundation asserts that a portion of the submitted information is not subject to the Act because it was inadvertently provided to the county by the foundation and would not otherwise have been available to the county. However, we note, and you state, the information at issue is referenced in other correspondence related to the building of the new library, and pertains to individuals who provided funding for the new library. Further, the county has made arguments under the Act for this information. Therefore, we conclude the information at issue is related to the transaction of official county business, and thus, is public information as defined by section 552.002(a). Accordingly, we will consider the county's and the foundation's arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Opinion MW-372 (1981). The submitted information does not contain any tax return information. Accordingly, none of the submitted information is confidential under section 6103(a), and the county may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses section 6104(d)(3)(A) of title 26 of the United States Code, which provides that the names and addresses of contributors to certain types of organizations need not be disclosed in that organization's annual return or certain other documents filed with the Internal Revenue Service. 26 U.S.C. § 6104(d)(3)(A). The foundation asserts portions of the submitted information consist of tax return information that are confidential under this section. However, the submitted information does not contain a tax return or any other tax return information of the foundation. Accordingly, none of the information at issue is confidential under section 6104, and the county may not withhold it under section 552.101 on that ground.

The county asserts portions of the remaining information are confidential under common-law and constitutional privacy, both of which are encompassed by section 552.101 of the Government Code. 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. The type 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. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD Nos. 600 at 9 (information revealing employee participation in group insurance plan funded partly or wholly by governmental body 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). We have marked personal financial information that we find is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ However, you have not demonstrated how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the county may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to the remaining information. Consequently, the county may not withhold the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.136 of the Government Code provides 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." Gov't

⁵As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for this information.

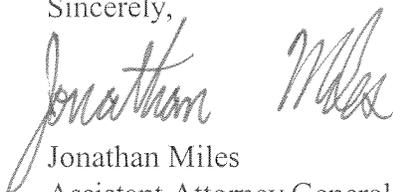
Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument,” and includes an account number. *Id.* § 552.136(a). Therefore, the county must withhold the account and access device numbers we have marked under section 552.136 of the Government Code. Although you assert the computer security passwords and the software license numbers you have marked constitute access devices, we find you have failed to demonstrate how this information constitutes access device numbers for purposes of section 552.136. Accordingly, the county may not withhold the computer security passwords and software license numbers you have marked under section 552.136 of the Government Code.

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the account and access device numbers we have marked under section 552.136 of the Government Code. 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 449535

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)