ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2012

Mr. Arthur Provenghi
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2012-07053

Dear Mr. Provenghi:

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# 453575.

The El Paso County Ethics Commission (the "commission") received a request for twelve categories of information, including (1) the number of ethics complaints filed with the commission during a specified time period; (2) copies of any complaints; (3) seven categories of information regarding complaints; (4) the names and legal addresses of members of the commission; and (5) any information the commission shared with a complainant or a respondent but did not disclose to the general public. You indicate some of the requested information has been released. You contend the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the information you submitted. We also have considered the comments we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

You initially contend that, pursuant to section 161.172(a) of the Local Government Code, the information submitted as Attachments B and C is not subject to the Act. The provisions of chapter 161 of the Local Government Code are applicable to certain county ethics commissions. *See* Local Gov't Code § 161.001 *et seq*. We understand the commission is

subject to chapter 161. Section 161.172(a) states that "[e]xcept as provided by Section 161.173(b) [of the Local Government Code], Chapter 552, Government Code does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint." *Id.* § 161.172(a). Having considered your representations and reviewed the information at issue, we find the information in Attachment C is related to a sworn complaint and thus falls within the scope of section 161.172(a). You do not indicate, and it does not otherwise appear to this office, that any of the information in Attachment C is subject to section 161.173(b) of the Local Government Code. *See id.* § 161.173(b) (relating to an order issued by a standing preliminary review committee after completion of preliminary review or hearing determining a violation other than a technical or *de minimis* violation has occurred). We therefore agree section 161.172(a) of the Local Government Code specifically excludes the information in Attachment C from the provisions of the Act. Although the requestor has cited legal authorities for what he believes to be a public right of access to information related to ethics complaints, because we conclude the information in Attachment C falls outside of the Act, addressing his arguments is beyond the scope of this office's authority. Thus, we conclude Attachment C is not subject to the Act and need not be released to the requestor.[1]

Although you also contend the Act is not applicable to the information in Attachment B, you do not indicate, nor does the information itself reflect, that Attachment B is related to "the processing, preliminary review, preliminary review hearing, or resolution of a *sworn* complaint." *Id.* (emphasis added). Thus, we conclude you have not demonstrated Attachment B falls within the scope of section 161.172(a) of the Local Government Code. Therefore, the information in Attachment B is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002(a), .021.

You also contend Attachment B is confidential under section 552.101 of the Government Code in conjunction with section 161.172(a) of the Local Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. Statutory confidentiality under section 552.101 requires express language making certain information confidential or stating that certain information shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987) (construing statutory predecessor). Although you seek to withhold Attachment B under section 552.101 on the basis of section 161.172(a), we note this provision does not contain language making information confidential; instead, section 161.172(a) excludes certain specified information from the scope of the Act. *See* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). We therefore conclude the commission may not withhold any of the information in Attachment

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[1]As we are able to make this determination, we need not address your other arguments against disclosure of Attachment C.

B under section 552.101 of the Government Code on the basis of section 161.172(a) of the Local Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We find the personal financial information we have marked in Attachment B is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the commission must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note Attachment B also contains e-mail addresses that fall within the scope of section 552.137 of the Government Code.[2] Section 552.137 states "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The commission must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

In summary, (1) Attachment C is not subject to the Act and need not be released to the requestor; (2) the commission must withhold the personal financial information we have marked in Attachment B under section 552.101 in conjunction with common-law privacy;

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[2]This office will raise section 552.137 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

and (3) the commission must withhold the e-mail addresses we have marked in Attachment B under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure. The rest of the information in Attachment B 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/em

Ref: ID# 453575

Enc: Submitted documents

c: Requestor
(w/o enclosures)