



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2012

Ms. Jelain Chubb
State Archivist and Director
Archives and Information Services Division
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2012-08191

Dear Ms. Chubb:

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# 454830.

The Texas State Library and Archives Commission (the "commission") received a request for a specified inventory of a named individual's estate. Although you take no position with regard to the public availability of the submitted information, you state the request for information may implicate the interests of third parties. Accordingly, you have notified individuals of their right to submit comments to this office stating 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 received comments from an attorney for the heirs of the named individual's estate (the "estate") and the individual who performed the inventory at issue. The individual who performed the inventory at issue states she does not object to release of the submitted information. The estate claims the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.120, 552.121, and 552.124 of the Government Code. We have considered the estate's arguments 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. Upon review, we find the estate has failed to demonstrate how any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.110(b) of the Government Code 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). Upon review, we find the estate has made only conclusory allegations that release of the submitted information would cause it substantial competitive harm. Accordingly, the commission may not withhold any portion of the submitted information under section 552.110(b) of the Government Code.

Section 552.120 of the Government Code makes confidential “[a] rare book or original manuscript that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research[.]” Gov’t Code § 552.120. The submitted information consists of an inventory of manuscripts, imprints, and ephemera. Upon review, we find the estate has failed to demonstrate that the submitted information consists of a rare book or original manuscript for purposes of section 552.120. Accordingly, the commission may not withhold the submitted information on that basis.

Section 552.121 of the Government Code makes confidential “[a]n oral history interview, personal paper, unpublished letter, or organizational record of a nongovernmental entity that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research . . . to the extent that the archival and manuscript repository and the donor of the interview, paper, letter, or record agree to limit disclosure of the item.” *Id.* § 552.121. Upon review, we find the estate has failed to demonstrate that the submitted information consists of an oral history interview, personal paper, unpublished letter, or organizational record for purposes of section 552.121. Accordingly, the commission may not withhold the submitted information on that basis.

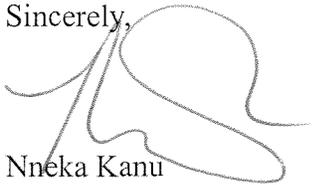
Section 552.124 of the Government Code makes confidential, with certain exceptions that are not applicable here, “[a] record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service[.]” *Id.* § 552.124(a)-(b); *see also* Open Records Decision No. 100 at 3 (1975) (identifying information of library patrons in connection with object of their attentions is confidential by constitutional law). We note that only the names, addresses, and other information specifically identifying library patrons may be withheld

under section 552.124. *See* Open Records Decision No. 649 at 3 (1996) (confidentiality provisions strictly construed). Upon review, we find the estate has failed to demonstrate that any portion of the submitted information identifies or serves to identify a person who requested, obtained, or used a library material or service; therefore, the commission may not withhold any of the information at issue under section 552.124 of the Government Code. As no further exceptions to disclosure have been raised, the commission must release the submitted information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 454830

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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