



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2012

Mr. Don Jones
Legal Counsel
State Bar of Texas
1414 Colorado
Austin, Texas 78701

OR2012-10034

Dear Mr. Jones:

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# 457518.

The State Bar of Texas (the "state bar") received a request for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note Exhibit C is not responsive because it was created after the date the state bar received the instant request. The state bar need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note Exhibit B-1 contains checks, deposit records, and other information subject to section 552.022(a)(3) of the Government Code, which provides that "information in an

¹We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body” is subject to required public disclosure unless it is made expressly confidential under the Act or “other law.” Gov’t Code § 552.022(a)(3). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception that may be waived and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, Exhibit B-1 may not be withheld under that section. However, you raise sections 552.101 and 552.102 of the Government Code for Exhibit B-1, and we note a portion of Exhibit B-1 is subject to section 552.136 of the Government Code.² Because each of these sections make information confidential under the Act, we will address the applicability of sections 552.101, 552.102, and 552.136 to Exhibit B-1.

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. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types 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. *See id.* at 683. Upon review, we find you have failed to demonstrate any portion of Exhibit B-1 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, no portion of Exhibit B-1 may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court recently 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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find you have failed to demonstrate how any portion of Exhibit B-1 must be withheld under section 552.102(a) of the Government Code. Accordingly, the state bar may not withhold any of Exhibit B-1 under section 552.102(a).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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). Upon review, we find Exhibit B-1 contains bank routing numbers and bank account numbers, which we have marked, that the state bar must withhold under section 552.136. As you raise no additional exceptions for the remaining information in Exhibit B-1, the state bar must release this information pursuant to section 552.022 of the Government Code.

You assert the remaining responsive information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by a proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform us, and provide documentation demonstrating, the Austin Police Department objects to disclosure of the remaining responsive information at issue because it pertains to a pending criminal investigation. Based on your representations, we conclude the state bar may withhold the remaining responsive information at issue under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In summary, with the exception of the information we have marked under section 552.136 of the Government Code, the state bar must release the information in Exhibit B-1 pursuant to section 552.022(a)(3) of the Government Code. The state bar may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.³

³As we are able to make this determination, we need not address your remaining arguments against disclosure.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 457518

Enc. Submitted documents

c: Requestor
(w/o enclosures)