



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2012

Ms. Deborah H. Loomis
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705

OR2012-13774

Dear Ms. Loomis:

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# 463496.

The Texas Department of Banking (the "department") received a request for nine categories of information pertaining to three perpetual care cemeteries represented by the requestor. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.116, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.116 of the Government Code provides as follows:

¹We note in your letter dated July 10, 2012, you withdrew your claim under section 552.103 of the Government Code. Additionally, you raise section 552.130 of the Government Code for driver's license numbers and section 552.147 of the Government Code for social security numbers to the extent the submitted information contains that information. Because the submitted information does not contain driver's license numbers or social security numbers, we do not address your claims under either section 552.130 or section 552.147.

²We 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.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing body of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state the information you have marked consists of audit working papers compiled by the department during the course of investigations into the perpetual care cemeteries at issue for purposes of certification renewal, as authorized under sections 712.0034 and 712.0037 of the Health and Safety Code. *See* Health & Safety Code §§ 712.0034(a), .0037(a), .001 (authorizing the department's commissioner to investigate an applicant before issuing renewal certificate of authority). Based on your representations and our review, we agree the information you have marked constitutes audit working papers under section 552.116. Accordingly, the department may withhold the marked information under section 552.116.³

³As our ruling for this information is dispositive, we do not address your remaining arguments against its 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.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which 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 demonstrated. *Id.* at 681-82. Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Upon review, we find some of the information reveals personal financial decisions of individuals and is highly intimate or embarrassing information of no legitimate public interest. Accordingly, the department must withhold the names of the individuals who have purchase agreements with the perpetual care cemeteries at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information you have marked is highly intimate or embarrassing. Consequently, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

You claim the bank account and routing numbers you have marked is excepted from disclosure under section 552.136 of the Government Code. Section 552.136(b) 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. However, the information at issue belongs to the requestor’s client. Section 552.136 protects privacy interests; thus, the requestor has a right of access to his client’s bank account and routing numbers under section 552.023 of the Government Code. *See id.* § 552.023 (person or person’s authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person’s privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning himself). Accordingly, the department may not withhold the marked information under section 552.136.

You also claim the e-mail addresses you have marked are subject to section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). However, the e-mail addresses at issue belong to the requestor and the requestor’s clients, to which the requestor has a right of access pursuant to section 552.137(b). *See id.* § 552.137(b). Consequently, the department may not withhold the marked e-mail addresses from this requestor under section 552.137.

In summary, the department may withhold the information you have marked under section 552.116 of the Government Code. The department must withhold the names of the individuals who have purchase agreements with the perpetual care cemeteries at issue under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.⁴

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 463496

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released includes bank account numbers, a routing number, and e-mail addresses. Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b), such as account and routing numbers, without the necessity of seeking a decision from this office. 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 *id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold several categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting a decision from this office.