



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2013

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2013-08469

Dear Ms. Alexander:

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# 487837.

The Texas Department of Transportation (the "department") received two requests from the same requestor for the following: prevailing wage complaints and notice of initial determinations against a named company; notices of initial determinations against BoMax Contractors, LLC ("BoMax"); payroll, time sheets, and pay stubs relating to specified projects; a contract between the department and a named company; and documents submitted to a named company from BoMax. You state the department does not have some of the requested information.¹ The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. You also state, and provide documentation showing, you notified BoMax of the department's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-13599 (2012). In Open Records Letter No. 2012-13599, we determined the department must withhold the requested information under section 552.101 of the

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Government Code in conjunction with common-law privacy. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2012-13599 as a previous determination and withhold the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2012-13599, we will address your 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.” 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). 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. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). You state the submitted pay stub records and daily time sheets cover individuals who are employed by private contractors, and not by the department, and argue “[t]hese records pertain solely to transactions between the contractor and its employees[.]” You state the department obtained the information at issue during an investigation of a federal wage complaint. Upon review, we find some of the information in the submitted pay stub records is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department must withhold this information, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not confidential under common-law privacy and the department may not withhold it from release under section 552.101 on that ground.

You assert some of the remaining information is excepted under section 552.147 of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). The department may withhold the social security numbers in the submitted information under section 552.147.²

²We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

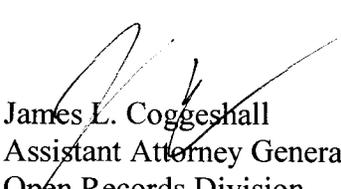
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, BoMax has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of that third party, and the department may not withhold any portion of the submitted information on that basis. *See* Open Records Decision Nos. 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), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

To conclude, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, the department must continue to rely on Open Records Letter No. 2012-13599 as a previous determination and withhold the information in accordance with that ruling. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. The department must release the remaining 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 487837

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)