



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2013

Mr. Chad Cowan  
Counsel for the County of Jones  
Attorney at Law  
P.O. Box 68  
Anson, Texas 79501

OR2013-13694

Dear Mr. Cowan:

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# 495580.

Jones County (the "county") received a request for all e-mails of the county clerk for a specified time period. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information constitutes records of the judiciary. The Act generally requires the public disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.002(a)(1). While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing

*Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). Upon review, we find the information we have marked pertains to the county clerk acting as an agent of the judiciary. As such, this information is not subject to release under the Act, and the county need not release this information in response to the request.<sup>1</sup> However, we find the remaining information was created and maintained by the county clerk for administrative purposes. Therefore, this information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act. Accordingly, we will address your arguments against disclosure of this 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 (1) containing 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 satisfied. *Id.* at 681-82. The type 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 a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note, however, the public generally has a legitimate interest in information relating to public employment and public employees. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 (public employee’s job performance does not generally constitute employee’s private affairs), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of

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<sup>1</sup>As we are able to make this determination, we do not address your arguments against disclosure of this information. We note records of the judiciary may be public under other sources of law. *See* Gov’t Code § 29.007(d)(4) (complaints filed with municipal court clerk), (f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov’t Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Furthermore, information pertaining to leave of public employees is generally a matter of legitimate public interest. *See* Open Records Decision No. 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). Upon review, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

The county raises section 552.110 of the Government Code for the remaining information. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110. We note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your argument under section 552.110 of the Government Code.

We note portions of the remaining information are subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individual at issue timely requested confidentiality under section 552.024, the county must withhold the information we have marked in the remaining information under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find no portion of the remaining information consists of motor vehicle record information for the purposes of section 552.130 of the Government Code. Thus, the county may not withhold any portion of the remaining information under section 552.130 of the Government Code.

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<sup>2</sup>The 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 “[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.” *Id.* § 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. *See id.* § 552.136(a) (defining “access device”). You generally raise section 552.136 for the remaining information. Upon review, we find the remaining information does not contain any information subject to section 552.136. Accordingly, the county may not withhold any portion of the remaining information on the basis of section 552.136 of the Government Code.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address of a person who has a contractual relationship with a governmental body or an e-mail address provided by a vendor who seeks to contract with the governmental body. *See id.* § 552.137(c). You inform us the owners of the e-mail addresses contained in the remaining information have not affirmatively consented to disclosure of their e-mail addresses. Upon review, we find some of the e-mail addresses you have marked in the remaining information fall under subsection 552.137(c). Thus, the county must withhold only the e-mail addresses we have marked in the remaining information under section 552.137 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. You seek to withhold a Federal Employee Identification Number as information excepted under section 552.147. Because section 552.147 only applies to social security numbers, we find the county may not withhold the information at issue under section 552.147 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the records of the judiciary we have marked are not subject to the Act and need not be released in response to the request for information. To the extent the individual at issue timely requested confidentiality under section 552.024, the county must withhold the

information we have marked under section 552.117(a)(1) of the Government Code. The county must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released. However, any information protected by copyright may only be released in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen J. Santos", with a long horizontal flourish extending to the right.

Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 495580

Enc. Submitted documents

c: Requestor  
(w/o enclosures)