



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2013

Mr. James Wheeler  
Criminal District Attorney  
Wood County  
P.O. Box 689  
Quitman, Texas 75783

OR2013-16085

Dear Mr. Wheeler:

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# 499927.

The Wood County Sheriff's Office (the "sheriff's office") received a request for certain records related to individuals and entities approved to write bail bonds in Wood County. You claim the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.147 of the Government Code. Additionally, you indicate release of the submitted information may implicate the proprietary interests of certain third parties. Accordingly, you indicate, and have provided documentation demonstrating, you notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating

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<sup>1</sup>The notified third parties are as follows: A&A Bail Bonds; AAA Bail Bonds; Brison & Brison Bail Bonds; Easy Pickens Bail Bonds; Gladius Bail Bonds; Monte Coleman Discount Bail Bonds; and Texas Bail Bonds.

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties. Thus, the third parties have not demonstrated any of the companies has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); 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. Accordingly, the sheriff's office may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.101 of the Government Code excepts "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *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) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, whether financial information is of legitimate public interest, and therefore not protected by common-law privacy, must be determined on a case-by-case basis.

We understand the submitted information, which includes financial information, was provided to the sheriff's office by individuals for the purpose of obtaining approval of bail bond licenses. Because the information was used by the sheriff's office to assess the status of bail bond licensure, we find there is a legitimate public interest in this information. *See* ORD 600 (legitimate public interest exists in facts about a financial transaction between individual and governmental body). Thus, upon review, we find the submitted financial information is of legitimate public concern. Therefore, this information is not confidential under common-law privacy and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of

decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)); *cf. Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.—El Paso 1980, no writ) (constitutional right of privacy does not protect personal financial information filed with county bail bond board as required to obtain a license to act as bondsman; recognizing public interest in such information). Upon review, we find you have failed to demonstrate how any portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff's office may not withhold any of the submitted information under section 552.101 on the basis of constitutional privacy.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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); *see also id.* § 552.136(a) (defining "access device"). We note some of the information you have marked does not constitute an access device number for purposes of section 552.136. Therefore, except for the information we have marked for release, the sheriff's office must withhold the account numbers you have marked under section 552.136 of the Government Code.<sup>3</sup>

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>4</sup> *Id.* § 552.147(a). The sheriff's office may withhold the social security numbers you have marked under section 552.147 of the Government Code.

We note a portion of the remaining information is subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency or an agency of another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the sheriff's office

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<sup>3</sup>Section 552.136 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, access device numbers subject to section 552.136(b). *See* Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

<sup>4</sup>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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

must withhold the driver's license number we have marked under section 552.130 of the Government Code.<sup>5</sup>

In summary, except for the information we have marked for release, the sheriff's office must withhold the account numbers you have marked under section 552.136 of the Government Code. The sheriff's office may withhold the social security numbers you have marked under section 552.147 of the Government Code. The sheriff's office must withhold the driver's license number we have marked under section 552.130 of the Government Code. The sheriff's office 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.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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 499927

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

c: Ms. Debbie Keith  
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