



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2013

Ms. Hadassah Schloss
Open Records Coordinator
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2013-16271

Dear Ms. Schloss:

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# 499899.

The Texas General Land Office (the "GLO") received a request for payroll records concerning all employees of Phoenix Mechanical Corporation ("Phoenix") in reference to a specified project. You state you have provided some of the responsive information to the requestor. You claim the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state the proprietary interests of Phoenix might be implicated. Accordingly, you notified Phoenix of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted information other than the requested payroll records. Therefore, this information, which we have marked, is not responsive to the present request.

The GLO need not release non-responsive information in response to the request, and this ruling will not address that information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses 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) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, whether financial information is subject to a legitimate public interest and, therefore, is not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid “not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]” Gov’t Code § 2258.021(a). Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record “shall be open at all reasonable hours to inspection by the officers and agents of the public body.” *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov’t Code § 2258.024).

You state the submitted certified payroll records relate to employees from a subcontractor engaged in a public works project. You inform us the information at issue is maintained in the performance of the subcontractor’s own statutory duty under section 2258.024 of the Government Code. You state the information at issue pertains solely to transactions between the subcontractor and its employees. You further argue the GLO has access to the information at issue solely to ensure compliance with state law, and you inform us the GLO

has not used the payroll records for any public purpose other than to ensure compliance with state law. You do not indicate the GLO has received a prevailing wage complaint related to the requested information. Therefore, based on these facts, we conclude there is no legitimate public interest in release of the submitted certified payroll records at this time, and the GLO must withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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, 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 499899

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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P.O. Box 2033
Manchaca, Texas 78652
(w/o enclosures)