



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2013

Ms. Marlena K. Sparkman  
General Counsel  
Texas State Securities Board  
P.O. Box 13167  
Austin, Texas 78711-3167

OR2013-19039

Dear Ms. Sparkman:

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# 504231.

The Texas State Securities Board (the "board") received a request for information pertaining to: accounting and practice manuals authorized or used by the board; employment contracts for each board employee; procedures and contractual considerations for outside contractors; method of approval for "expenditures which fall outside the normal considerations within existing contracts;" travel vouchers or reimbursement to employees or contractors; and the names and addresses of all entities who were issued funds by the board for participation in any enforcement activity all during a specified time period.<sup>1</sup> You indicate the board will release some of the requested information upon payment of costs. You state the board is withholding some of the requested information it obtained in connection with an investigation pursuant to the previous determination we issued to the board in Open Records

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<sup>1</sup>You state the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Letter No. 2004-0239 (2004).<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.136, 552.137, and 552.147 of the Government Code.<sup>3</sup> We have considered your arguments and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract, relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Portions of the submitted information consist of information in an account or voucher relating the expenditure of public funds. We find this information is subject to section 552.022(a)(3). Although you seek to withhold this information under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the information subject to section 552.022(a)(3) may not be withheld under section 552.108. You also claim sections 552.101, 552.117, 552.136 of the Government Code for portions of the information subject to section 552.022(a)(3). Because sections 552.101, 552.117, and 552.136 make information confidential under the Act, we will address their applicability

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<sup>2</sup>In Open Records Letter No. 2004-0239, we granted the board a previous determination authorizing it to withhold information obtained by the board in connection with an investigation to prevent or detect a violation of the Texas Securities Act or a board rule or order under section 552.101 of the Government Code in conjunction with article 581-28 of the Texas Securities Act, without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see* Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)).

<sup>3</sup>Although you raise section 552.305, we note section 552.305 is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, this section addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See id.*

<sup>4</sup>We assume the "representative sample" of records 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 that submitted to this office.

to the information subject to section 552.022(a)(3). We will also consider your argument under section 552.108 for the information not subject to section 552.022.

You contend the information you have marked is confidential pursuant to article 581-28 of the TSA. Section 552.101 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 information protected by other statutes. Article 581-28 provides in pertinent part:

A. Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect the violation of [the TSA] or a Board rule or order. For this purpose, the Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of all records, whether maintained by electronic or other means, relating to any matter which the Commissioner has authority by [the TSA] [footnote omitted] to consider or investigate, and may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature received in connection with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court for good cause shown. . . .

V.T.C.S. art. 581-28(A). You state the information you have marked was made by the board in connection with an investigation to prevent or detect a violation of the TSA or board rule or order. Based on your representation and our review of the information at issue, we agree this information consists of internal notes, memoranda, reports, or communications made in connection with an investigation. Therefore the information you have marked is confidential under article 581-28 of the TSA and must be withheld pursuant to section 552.101 of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also 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. We note, however, that the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records

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<sup>5</sup>As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

Decisions 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), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Further, we note the names, home addresses, and telephone numbers of living members of the public are generally not highly intimate or embarrassing. See Open Records Decision Nos. 551 at 3 (disclosure of person's name, address, or telephone number not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find the board has failed to demonstrate how the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the board may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You inform us, and provide documentation showing, that one of the employees at issue timely elected confidentiality under section 552.024. Therefore, the board must withhold the information pertaining to that employee, which you have marked, under section 552.117(a)(1) of the Government Code. However, you do not inform us the remaining employees whose information is at issue timely elected confidentiality for their information under section 552.024. Accordingly, if the remaining employees whose personal information is at issue timely elected to keep their information confidential pursuant to section 552.024, the board must withhold the remaining information you have marked under section 552.117(a)(1). The board may not withhold this information under section 552.117(a)(1) if the employees did not timely elect to keep their information confidential pursuant to section 552.024.<sup>6</sup>

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<sup>6</sup>If the employee did not make a timely confidentiality election under section 552.024, we note section 552.147(b) of the Government Code permits a governmental body to withhold a living person's social security number without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>7</sup> Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the board must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>8</sup>

Section 552.136 of the Government Code states "[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. Accordingly, we find the board must withhold the account numbers you have marked under section 552.136 of the Government Code.

Section 552.137 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). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.<sup>9</sup>

Next, you seek to withhold portions of the remaining information under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, the board may withhold the remaining social security numbers under section 552.147 of the Government Code.<sup>10</sup>

In summary, the board must withhold the information you have marked under section 552.101 of the Government Code in conjunction with article 581-28 of the TSA. The board must withhold the information pertaining to the employee who timely elected confidentiality under section 552.024 of the Government Code, which you have marked,

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<sup>7</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>8</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* 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 id.* § 552.130(d), (e).

<sup>9</sup>As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

<sup>10</sup>As previously noted, 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. Gov't Code § 552.147(b).

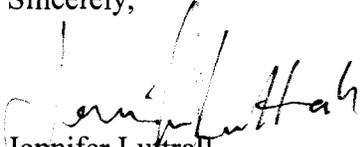
under section 552.117(a)(1) of the Government Code. If the remaining employees whose personal information is at issue timely elected to keep their information confidential pursuant to section 552.024 of the Government Code, the board must withhold the remaining information you have marked under section 552.117(a)(1) of the Government Code. The board must withhold the information we have marked under section 552.130 of the Government Code. The board must withhold the information you have marked under 552.136 of the Government Code. The board must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The board may withhold the submitted social security numbers under section 552.147 of the Government Code. The remaining information must be released.

You also request this office issue a "previous determination" that would permit the board in the future to withhold from disclosure internal notes, memoranda, reports, or communications made by the board in connection with an investigation to prevent or detect a violation of the TSA, board rule, or order without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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 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 Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 504231

Enc. Submitted documents

c: Requestor  
(w/o enclosures)