



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2014

Ms. June Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2014-17523

Dear Ms. Harden:

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# 538480 (OAG PIR No. 14-39453).

The Office of the Attorney General (the "OAG") received a request for specified information pertaining to Request for Proposal No. 359853. You state the OAG will release most of the requested information. You state, although the OAG takes no position with respect to the remaining requested information, its release may implicate the interests of DNA Diagnostics Center, Inc. ("DDC"). Accordingly, you state, and provide documentation demonstrating, the OAG notified DDC of the request for information and of its right to submit arguments stating 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); 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 reviewed the submitted information and the arguments submitted by DDC.

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 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 that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 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). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373.

DDC raises common-law privacy for portions of the submitted information. Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the OAG must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find DDC has failed to demonstrate the remaining information for which it raises common-law privacy is highly intimate or embarrassing and not of legitimate public concern. Therefore, the OAG may not withhold the remaining information under section 552.101 on that basis.

DDC also submits arguments against disclosure of its information under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

DDC explains it is a privately held corporation and contends the release of its financial records would cause the company substantial competitive harm. Upon review, we conclude DDC has established the release of some of its information would cause it substantial competitive injury. Accordingly, the OAG must withhold the information we have marked and indicated under section 552.110(b). However, we find DDC has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of DDC’s remaining information at issue would cause the company substantial competitive harm. We

therefore conclude the OAG may not withhold the remaining information at issue under section 552.110(b).

We note portions of the remaining information are subject to section 552.136 of the Government Code.<sup>1</sup> Section 552.136 states, "Notwithstanding 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." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the OAG must withhold the insurance policy numbers we have marked under section 552.136.

In summary, the OAG must withhold the following information: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked and indicated under section 552.110(b) of the Government Code; and (3) the insurance policy numbers we have marked under section 552.136 of the Government Code. The OAG 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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

---

<sup>1</sup>Our office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 538480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Jerry Watkins  
Executive Vice President and Chief Operating Officer  
DNA Diagnostics Center, Inc.  
One DDC Way  
Fairfield, Ohio 45014  
(w/o enclosures)