



March 12, 2002

Ms. Lisa Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2002-1192

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160032.

The City of Corpus Christi (the "city") received a request for seven categories of information relating to a named roofing and remodeling contractor. You inform us that the city is making available to the requestor most of the requested information. We assume that you have done so. See Gov't Code §§ 552.301, .302. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and 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. 540 S.W.2d at 683.

This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). Upon review of your arguments and the submitted information, we agree that portions of the information, which we have marked, must be withheld under section 552.101 in conjunction with the common law right of privacy.

Section 552.101 also encompasses information protected by statutes. You claim that a social security number contained in the information is confidential under section 56.001 of the Occupations Code, which provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. You inform us that the social security number at issue is that of an individual contractor. You state that the city required the contractor to submit certain information to the City Housing and Community Development Department in order to bid on home improvement projects funded by federal loans and grants. However, you do not inform us that the city is a licensing agency in the contractor's or any specified occupation or profession. Nor do you inform us that contractor provided the social security number as an applicant or holder of a license, certificate of registration, or other legal authorization to practice in a specified occupation or profession. *See id.* Accordingly, we conclude that the city has failed to establish the applicability of section 56.001 of the Occupations Code to the social security number at issue. Therefore, the city may not withhold the social security number from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 56.001.

However, we note that social security numbers may be withheld in some circumstances under section 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Because you have cited no applicable provision of law, we have no basis for concluding that the social

security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the pool pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the city must withhold information we have marked under section 552.101 and the common law right of privacy. The social security number contained in the information at issue may be confidential under section 552.101 in conjunction with federal law. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Kay Hastings". The signature is written in a cursive, flowing style.

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 160032

Enc: Marked documents

c: Ms. Alma Marie Studer  
5433 County Road 79  
Robstown, Texas 78380  
(w/o enclosures)