



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2006

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church Street
Palestine, Texas 75801

OR2006-01599A

Dear Ms. Mitchell:

This office issued Open Records Letter No. 2006-01599 (2006) on February 17, 2006. In your initial brief to this office dated December 7, 2005, you informed us that the request for information was received by the Anderson County District Attorney (the "district attorney") on November 23, 2005. Based on this information, we concluded that the district attorney failed to meet its procedural requirements under section 552.301 of the Government Code. You have since informed us that the district attorney actually received the request for information on November 28, 2005 and explain that listing the earlier date in your previous correspondence was a clerical oversight. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on February 17, 2006. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 242645.

The district attorney received a request for "any correspondence from the City of Palestine to [the district attorney's] office asking for an investigation of purchases by [a named individual] when he was a city employee." We understand you to claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108,

and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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). The submitted records include information in an account or voucher that is related to expenditure of public funds. This information, which we have marked, is subject to section 552.022(a)(3) and may only be withheld if it is confidential under other law. Although you argue that this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do not constitute "other laws" for purposes of section 552.022(a)(3). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district attorney may not withhold the information subject to section 552.022(a)(3) under either section 552.103 or section 552.108 of the Government Code. However, because sections 552.101 and 552.136 do constitute "other laws" under of section 552.022, we will address your arguments under these exceptions for the information that is subject to section 552.022(a)(3).

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. You claim that the submitted information is protected under common-law privacy. The doctrine of common-law privacy, which is encompassed by section 552.101, protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to

¹You also raise section 552.107 of the Government Code as an exception to disclosure. However, because you have not submitted any arguments explaining how section 552.107 applies to the submitted information, we conclude that the district attorney has waived this exception. See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 may be waived).

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure).

You inform us that the information at issue pertains to an investigation of an individual who, while employed with the City of Palestine, allegedly diverted public funds and public property. As such, these records do not pertain to this individual's personal financial information, but rather financial transactions involving public funds. In this regard, we find that the public has a legitimate interest in this information. *See id.*; *see also* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of resignation or termination), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under privacy), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy). Upon review, we conclude that none of this information may be withheld under section 552.101 on the basis of common-law privacy.

Next, section 552.136 of the Government Code states that "[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." Gov't Code § 552.136. We agree that the credit card account number, which we have marked in the documents that are subject to section 552.022(a)(3), must be withheld pursuant to section 552.136.

We note that the remaining information that is subject to section 552.022(a)(3) includes a "financial transaction summary" form that indicates it is protected by copyright law. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright law unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials that are protected by copyright law, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of

compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

Lastly, we address your claim under section 552.108 of the Government Code for the information that is not subject to section 552.022(a)(3). Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the district attorney may withhold under section 552.108(a)(1) of the Government Code the information that is not subject to section 552.022(a)(3).³

In summary, with respect to the information that is subject to section 552.022(a)(3) of the Government Code, the district attorney must withhold the credit card account number that we have marked pursuant to section 552.136 of the Government Code. The remaining information that is subject to section 552.022(a)(3) must be released. However, in releasing information that is protected by copyright, the district attorney must comply with copyright law. The district attorney may withhold under section 552.108(a)(1) of the Government Code the information that is not subject to section 552.022(a)(3).

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 ten 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).

³As we reach this conclusion, we need not address your remaining arguments for this information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 242645

c: Mr. Judd Quarles
The Clarion
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Palestine, Texas 75801
(w/o enclosures)