



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2007

Mr. Tommy Williams
Atascosa County Sheriff
1108 Campbell Avenue
Jourdanton, Texas 78026

OR2007-06923

Dear Mr. Williams:

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# 280100.

The Atascosa County Sheriff's Department (the "department") received a request for any and all financial statements submitted to the department by bail bond companies executing bail in Atascosa County from September 1, 2005 through March 13, 2007. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also indicate that release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you have notified the interested third parties of this request and of their opportunity to submit comments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this decision, none of the interested third parties have submitted to this office any reasons explaining why their information should not be released. Therefore, none of the interested third parties have provided us with any basis to conclude that they have protected proprietary interests in any of the responsive information. *See, e.g., id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must

show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that the department may not withhold any portion of the requested information on the basis of any proprietary interest the third parties may have in the information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has previously determined that “all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.” Open Records Decision No. 373 at 3. However this office also found that a legitimate public interest can exist in such financial information. *Id.*

In this instance, you state that the submitted information consists of financial statements of bail bond sureties that were filed with the department pursuant to article 17.141 of the Code of Criminal Procedure, which requires that, in a county where a bail bond board regulated under chapter 1704 of Occupations Code does not exist, an eligible bail bond surety must file an annual sworn financial statement with the sheriff. *See* Crim. Proc. Code art. 17.141. Based on our review of your arguments and the information at issue, we find that, although the submitted information arguably satisfies the first prong of the *Industrial Foundation* test, we believe the public has a legitimate interest in this type of information. *Cf. Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.—El Paso 1980, no writ) (constitutional right of privacy does not protect personal financial information filed with county bail bond board as required to obtain a license to act as bondsman; recognizing public interest in such information). We therefore conclude that none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the 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, 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 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/ma

Ref: ID# 280100

Enc. Submitted documents

c: Mr. Robert Herrera, Jr.
El Paso Bail Bonds
1214 Oak Street
Jourdanton, Texas 78026
(w/o enclosures)