



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2009

Ms. Laura Garza Jiminez
Nueces County Attorney
Nueces County Courthouse
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2009-03290

Dear Ms. Jiminez:

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# 337020.

The County of Nueces (the "county") received a request for information regarding specified categories of uncashed and stale-dated checks held by the county. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information are not responsive to the request because the requestor only seeks information regarding checks in the amount of \$500 or more. Thus, any information regarding checks for less than \$500 is not responsive. The county need not release non-responsive information in response to this request and this ruling will not address that information.

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. You claim that the requested information is made confidential by section 552.101 of the Government Code in conjunction with sections 74.104 and 76.104 of the Property Code.¹ Under chapter 74 of the Property Code, a holder of property presumed abandoned under chapter 72 must file a report of the property with the Texas Comptroller (the "comptroller"). See Prop. Code §§ 74.101; 72.101 (governs the conditions under which tangible and intangible personal property is presumed to be abandoned by the owner of the

¹Chapter 76 of the Property Code applies to property held by a school district, municipality, or county that is presumed abandoned under chapter 72 or chapter 75 and is valued at \$100 or less. Since the material responsive to the instant request pertains to property with a value of \$500 or greater, section 76.104 does not apply and we will not address your argument under this section. Prop. Code § 76.001(2)(B).

property). The public availability of the property reports required under section 74.101 is governed by section 74.104 of the Property Code. Section 74.104 provides:

- (a) Except as provided by Section 74.201, 74.203, or 74.307, a property report filed with the comptroller under Section 74.101 is confidential until the second anniversary of the date the report is filed.
- (b) The social security number of an owner that is provided to the comptroller is confidential.

Prop. Code § 74.104. You state that the submitted unclaimed check reports are used to prepare the property reports filed with the comptroller and/or the treasurer of the county under section 74.101. You assert that because the property reports filed with the comptroller and/or treasurer of the county are confidential, the information used to compile them is also confidential. You further assert that the unclaimed check report should be confidential prior to its inclusion in the property report. We disagree. Section 74.104 applies only to a property report filed with the comptroller pursuant to section 74.101. Section 74.104 makes the report confidential, but not the underlying information. We therefore determine that no portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 74.104 of the Property Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. You claim that information regarding outstanding child support checks issued by non-custodial parents to custodial parents is protected by the common-law right of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. In addition, prior decisions of this office have found that common-law privacy protects personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). We find that the information we have marked regarding child support payments constitutes personal financial information of no legitimate interest to the public. The child support information we have marked is protected by the doctrine of common-law privacy and must be withheld pursuant to section 552.101 of the Government Code.² Upon review, we conclude that the remaining information does not constitute highly intimate or embarrassing information of no legitimate public concern.

²As our ruling is dispositive with respect to the child support information, we will not address your remaining arguments against disclosure of this information.

Therefore, the remaining information may not be withheld on the basis of common-law privacy.

Section 552.136 of the Government Code provides in part that “[n]otwithstanding any other provision of [the Act], 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 id.* § 552.136(a) (defining “access device”). The county must withhold the bank account number it has marked under section 552.136 of the Government Code.

In summary, the county must withhold the marked information regarding child support transactions under section 552.101 of the Government Code in conjunction with common-law privacy. The marked bank account number must be withheld pursuant to section 552.136 of the Government Code. The remaining responsive information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/

Ref: ID# 337020

Enc. Submitted documents

c: Requestor
(w/o enclosures)