



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Mr. Robert T. Bass
Allison, Bass & Associates, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2009-07993

Dear Mr. Bass:

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# 345591.

Jack County Commissioner James Cozart (the "commissioner") received a request for information relating to a specified e-mail address. You state that information deemed to be related to the commissioner's function as a county official has been released with redactions. You contend that the rest of the submitted information is not subject to the Act. You also claim that some or all of the remaining information is exempted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.109, and 552.117 of the Government Code. We have considered your arguments and reviewed the information you submitted.

Initially, we address your assertion that the instant request for information is vague and ambiguous and "generally appears to be a 'fishing expedition' for information that is not generally considered to be either public information, or which is exempt from disclosure."¹ We note that administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex.*

¹We note that section 552.222 of the Government Code authorizes a governmental body to communicate with a requestor for the purpose of narrowing or clarifying a request for information. *See Gov't Code § 552.222(b); see also* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with requestor to clarify or narrow request will toll ten-business-day deadline to request decision under Gov't Code § 552.301(b)).

Indus. Accident Bd., 540 S.W.2d 668, 687 (Tex. 1976). Moreover, a governmental body is required to make a good-faith effort to relate a request to responsive information that it holds or to which it has access. See Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). You indicate that a good-faith effort was made to relate the instant request to the information that you have submitted. Accordingly, we will address the public availability of the submitted information.

We first note that some of the submitted information does not appear to have been in existence when the commissioner received this request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.² Thus, to the extent that the information at issue did not exist when the commissioner received the instant request, such information is not responsive to the request. This decision does not address the public availability of the non-responsive information.

Next, we address the information that was redacted from the information that was released.³ You contend that some of the redacted information is "privileged or private." 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. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. Common-law privacy under section 552.101 protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found.*, 540 S.W.2d at 685. Common-law privacy encompasses the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Records Decision Nos. 600 at 9-12 (1992), 545 at 4 (1990), 523 at 4 (1989), 373 at 4 (1983).

²See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³We note that the submitted copy of the released information reveals the portions of that information that were redacted.

We find that none of the redacted information is intimate or embarrassing and not a matter of legitimate public interest. We also find that none of the information in question is otherwise confidential or privileged for the purposes of section 552.101. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 658 at 4 (1998) (statutory confidentiality); *see also* Open Records Decision No. 573 at 4 (1990) (attorney general determines whether statute, taken as whole, contains language indicating legislative intent that certain information deemed "privileged" for some purposes is "confidential" for purposes of statutory predecessor to Gov't Code § 552.101). Therefore, none of the redacted information may be withheld under section 552.101 of the Government Code.

You also contend that the redacted information includes "personal credit card account numbers" and "passwords." Section 552.136 of the Government Code provides 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."⁴ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). In this instance, we find that the redacted information does not include a credit card, debit card, charge card or access device number. We therefore conclude that none of the information may be withheld under section 552.136 of the Government Code.

We note that the redacted information includes personal e-mail addresses. Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure.⁵ *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked a representative sample of the types of personal e-mail addresses that must be withheld under section 552.137, unless the owner of an e-mail address has consented to its disclosure.

You contend that the rest of the responsive information is not subject to disclosure under the Act. The Act is applicable to "public information," as defined by section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

⁴Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

⁵ Section 552.137 also is a mandatory exception and may not be waived. Gov't Code §§ 552.007, .352; ORD 674 at 3 n.4.

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

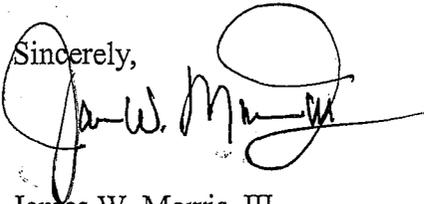
You inform us that the commissioner does not maintain a county e-mail account for use in conducting county business. You explain that the information at issue is related to a private e-mail account that the commissioner maintains. You state that the requestor thus seeks access to the commissioner's private e-mail. You contend that the Act is not applicable to information relating to the commissioner's private e-mail account. We note that the characterization of information as "public information" under the Act is not dependent on whether the information in question is in the possession of any particular individual or whether a governmental body has a particular policy or procedure that establishes access to the information. *See* Open Records Decision No. 635 at 3-4 (1995) (information does not fall outside Act's definition of "public information" merely because individual member of governmental body possesses information rather than governmental body itself); *see also* Open Records Decision No. 425 (1985) (information sent to school trustees' homes was public information because it related to governmental body's official business) (overruled on other grounds by Open Records Decision No. 439 (1986)). Nevertheless, having reviewed the rest of the responsive information, we find that the information in question was not collected and is not assembled or maintained under a law or ordinance or in connection with the transaction of official county business. *Cf.* ORD 635 at 4 (Gov't Code § 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). We therefore conclude that the rest of the responsive information does not constitute public information, as defined by section 552.002 of the Government Code, and as such is not subject to disclosure under the Act. *See* Gov't Code § 552.021. Thus, the commissioner need not release any of the remaining responsive information to the requestor.

In summary: (1) the types of personal e-mail addresses that we have marked must be withheld under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure; (2) the rest of the redacted information must be released; and (3) the rest of the responsive information is not subject to disclosure under the Act and need not be released to the requestor. As we are able to make these determinations, we need not address your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 345591

Enc: Submitted information

c: Requestor
(w/o enclosures)