



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

Mr. Shane Britton
Brown County Attorney
200 South Broadway
Brownwood, Texas 76801

OR2009-13776

Dear Mr. Britton:

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# 356884.

Brown County (the "county") received a request for (1) a complete transaction ledger for all county attorney funds including, but not limited to, any funds collected by the county attorney for the 2005, 2006, 2007, 2008, and 2009 fiscal years; (2) a complete and accurate document that evidences the county attorney's salary, including any additional compensation; (3) a copy of the pretrial diversion fund budget for the 2008 and 2009 fiscal years; (4) documentation pertaining to reimbursement to the county from pretrial diversion fees; and (5) documentation showing which pretrial intervention programs are administered. You state the county will release information responsive to items 2 through 5 of the request and part of item 1 of the request. You seek to withhold information pertaining to funds collected for the "hot check" restitution fund under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume 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.

Initially, we note the submitted trust account documents are subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. Gov't Code § 552.022 (a)(3). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the trust account documents may not be withheld under section 552.108. You also raise section 552.101 of the Government Code for this information, which is other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, we will address the applicability of this exception to the submitted 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. *See Gov't Code § 552.101.* Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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. *See id.* at 683. After carefully reviewing the information at issue, we find that no portion of this information is protected from disclosure under the common-law right to privacy, as there is a legitimate public interest in the identities of hot check offenders. *See Open Records Decision No. 518 at 3 (1989)* (finding payment to governmental body of the amount of "bad checks" and collection fees relates to governmental body's official duties and is of legitimate public concern). Accordingly, we conclude the county may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions against disclosure of this information, it 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 356884

Enc. Submitted documents

c: Requestor
(w/o enclosures)