



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2009

Ms. Susan K. Durso  
General Counsel  
Texas Residential Construction Commission  
P.O. Box 13509  
Austin, Texas 78711-3509

OR2009-15167

Dear Ms. Durso:

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# 359365 (TRCC Public Information Request # 2966).

The Texas Residential Construction Commission (the "commission") received a request for information related to a specified builder; the requestor subsequently modified her request to specifically include the builder's federal tax identification number. You have provided documentation showing that the commission sought clarification of the information requested, and the requestor narrowed her request to exclude social security numbers and Texas driver's license numbers.<sup>1</sup> See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state that the commission has released some responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Although your brief states that the requestor also excluded account access information subject to section 552.136 of the Government Code and e-mail addresses of members of the public subject to section 552.137 of the Government Code from her request, we note that the requestor's e-mail, which you have submitted with your brief, does not specifically authorize the withholding of information under either of these sections. Accordingly, this ruling will address the information you have marked under sections 552.136 and 552.137.

Initially, we note that Exhibit F contains social security numbers, which the requestor excluded from her request. The marked social security numbers are not responsive to the instant request, and this ruling does not address that information.<sup>2</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. Nos. 600 (1992), 545 (1990)*. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we agree that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. However, no portion of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but may not withhold any of the remaining information at issue on this basis.

Section 552.136(b) of the Government Code states 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). Therefore, the commission must withhold the information you have marked under section 552.136.

Section 552.137 of the Government Code states 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

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<sup>2</sup> Furthermore, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

e-mail address has affirmatively consented to its public disclosure. *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). You do not indicate that the owners of the e-mail addresses you have marked have consented to their release. Furthermore, it does not appear that any of these e-mail addresses are of a type listed in section 552.137(c). Therefore, the commission must withhold the e-mail addresses you have marked under section 552.137.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you have marked under sections 552.136 and 552.137 of the Government Code. The commission must release the remainder of the submitted information.

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](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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/rl

Ref: ID# 359365

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)