



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2009

Ms. Cynthia de Roch  
General Counsel  
Texas Residential Construction Commission  
P.O. Box 13509  
Austin, Texas 78711-3509

OR2009-17881

Dear Ms. de Roch:

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# 364859 (TRCC PIR No. 3065).

The Texas Residential Construction Commission (the "commission") received a request for four categories of information pertaining to a specified builder. You claim the commission has no information responsive to one of the categories of the request.<sup>1</sup> You state the commission has redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>2</sup> You also state that you have released a portion of the responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note that 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.

Initially, you inform us that the requestor clarified his request to allow the commission to redact certain information subject to sections 552.130, 552.136, and 552.137 of the Government Code.<sup>3</sup> Accordingly, any such information is not responsive to the request and need not be released to the requestor. We note, however, that the requestor's e-mail, which you have submitted with your brief, does not specifically authorize the withholding of some of the information you have redacted. Accordingly, this ruling will address the information you have marked under section 552.136.

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." Gov't Code § 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. 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 the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the commission must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

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." Gov't Code. § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Upon review, we conclude the commission must withhold the credit card account numbers we have marked under section 552.136 of the Government Code. However, you have failed to demonstrate how the remaining information you have marked is an access device number for purposes of section 552.136. Thus, this remaining

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<sup>3</sup>See Gov't Code § 552.222 (governmental body may communicate with requestor for purpose of clarifying or narrowing request)

information you have marked may not be withheld under section 552.136 of the Government Code.

In summary, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must also withhold the information we have marked under section 552.136 of the Government Code.<sup>4</sup> 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 364859

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.