



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Mr. Michael M. Kelly
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901

OR2012-08408

Dear Mr. Kelly:

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# 453899.

The Victoria County Sheriff's Office (the "sheriff's office") received a request for a copy of the sheriff's office's bail bond book record from August 1, 2011 to January 1, 2012, bail bond applications, financial statements, bail bond school attendance records, any other documents the sheriff's office received from any person requesting to write bail bonds in Victoria County from August 1, 2010 to January 1, 2012, and a list of bailbondsmen authorized to post bonds in Victoria County. You state the sheriff's office does not maintain the requested bail bond book record. We note 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 Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed). You state you have released some of the requested information. You claim a portion of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you indicate release of some of the remaining requested information may implicate the proprietary interests of Freedom Bail Bonds; A&A Bail Bonding; Kwik Bail Bonds; American Bail Bonds; E-Z Bonding Company ("E-Z Bonding"); Port Lavaca Bail Bonds; ABC Bonding; Assured Bail Bonds; and Bail Bond Hotline of Texas. Accordingly, you notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining*

that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from a representative of E-Z Bonding. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the sheriff's office's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). You inform us the sheriff's office received the request for information on February 28, 2012. Accordingly, the sheriff's office's fifteen-business-day deadline was March 20, 2012. However, as of the date of this letter, you have not submitted for our review the information pertaining to the third parties you notified pursuant to section 552.305 of the Government Code. Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301 with respect to that information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). We have received arguments from E-Z Bonding, whose interests can provide a compelling reason for non-disclosure under section 552.302. However, because the sheriff's office has not submitted the information pertaining to the third parties for our review, we have no basis to conclude this information is confidential pursuant to E-Z Bonding's arguments or on the basis of any other third party's interests. Thus, we have no choice but to order the sheriff's office to release the information pertaining to the third parties in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. *See Gov't Code* §§ 552.324, .325.

Next, we will address your arguments against disclosure of the information you submitted to our office for review. 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. 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 satisfied. *Id.* at 681-82. The type of information considered intimate or 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. Personal financial information related 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* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note that common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App—Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). However, the financial information of a company that is an individual or sole proprietorship is confidential under common-law privacy. *See Morton*, 338 U.S. at 652; ORD 620. You represent that the submitted information consists of personal financial statements belonging to individuals operating as bail bondsmen in Victoria County. Based on your representation, we agree the submitted information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 453899

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties:

E-Z Bail Bonds
c/o Mr. Alex Luna
Law Office of Alex Luna
P.O. Box 3634
Victoria, Texas 77903
(w/o enclosures)

Freedom Bail Bonds
A & A Bail Bonds
Kwik Bail Bonds
American Bail Bonds
Port Lavaca Bail Bonds
ABC Bonding
Assured Bail Bonds
Bail Bond Hotline of Texas
(w/o enclosures)
c/o Mr. Michael M. Kelly
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901