



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 5, 2014

Mr. Jeffrey W. Giles  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-03740

Dear Mr. Giles:

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# 515915 (GC No. 21041).

The City of Houston Housing and Community Development Department (the "city") received a request for documents related to housing and economic development construction projects and specified documents subject to the Davis-Bacon Act from 2008 to the date of this request. You state the city will release some of the requested information. You also state city will redact social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the remaining requested information is excepted from

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<sup>1</sup> 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. *Id.* § 552.147(b).

disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Prior decisions of this office have determined personal financial information not related to a transaction between an individual and a governmental body generally meets the first prong of the common-law privacy test. *See generally* Open Records Decision No. 600 (1992). However, whether financial information is subject to a legitimate public interest and, therefore, not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

The submitted certified payroll records pertain solely to transactions between the projects' contractors, subcontractors, and their employees. The city informs this office federal law provides, as a requisite to the receipt of federal funding for certain construction projects, the city must include certain provisions in their contracts with contractors. In this instance, you represent one such provision requires the city to receive and retain payroll records from its contractors and subcontractors so federal agencies can audit those records to ensure the contractors' and subcontractors' compliance with applicable federal wage regulations. *See* 23 C.F.R. § 635.118. You additionally inform this office the city has not itself used the payroll records for any public purpose, other than receiving and retaining them for review by a federal agency. Therefore, based on these facts, we conclude there is no legitimate public interest in release of the submitted certified payroll records at this time. Accordingly, the city 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.

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<sup>2</sup>We 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 those records contain substantially different types of information than that submitted to this office.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lana L. Freeman  
Assistant Attorney General  
Open Records Division

LLF/bhf

Ref: ID# 515915

Enc. Submitted documents

c: Requestor  
(w/o enclosures)