



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2014

Mr. William Schultz
Assistant District Attorney
Civil Division
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2014-05301

Dear Mr. Schultz:

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# 518192.

The Denton County Tax Office (the "county") received a request for property tax payment records pertaining to ten named individuals.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state, and provide documentation showing, you notified interested third parties of the receipt by the county of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from some of these individuals as well as the requestor. We have considered the submitted arguments and reviewed the submitted information.

¹We note the county received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

Initially, we note the requestor excludes home addresses. This information is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the county is not required to release nonresponsive information in response to this request.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes. Section 25.025 of the Tax Code states, in pertinent part:

(a) This section applies only to:

(1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure;

...

(6) a federal judge, a state judge, or the spouse of a federal judge or state judge;

(7) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

...

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the [Texas Comptroller of Public Accounts (the “comptroller”)], and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the

information does not identify an individual who has made an election under Subsection (b) in connection with the individual's address.

Tax Code § 25.025(a)(1), (6)-(7), (b)-(d). Section 25.02 of the Tax Code prescribes the information that must be contained within appraisal records. *See id.* § 25.02. The information at issue consists of property tax payment receipts. Upon review, we find you have failed to demonstrate how the responsive information consists of appraisal records for purposes of section 25.02 of the Tax Code. Accordingly, we find none of the responsive information is confidential under section 25.025 of the Tax Code and none may be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

One of the interested third parties raises section 552.108 of the Government Code, which excepts from disclosure information held by a law enforcement agency or prosecutor. Gov't Code § 552.108(a), (b). Neither the county nor individual at issue is a law enforcement agency or prosecutor. Further, our office has not been provided with a representation from any law enforcement agency that wishes the information at issue to be withheld. Accordingly, the interested third party has failed to demonstrate section 552.108 applies to the information at issue. *But see* Open Records Decision No. 474 (1987) (predecessor statute to section 552.108(a)(1) may be invoked by a proper custodian when a criminal incident is still under active investigation or prosecution and law enforcement entity represents that release of records will interfere with investigation or prosecution). Therefore, the county may not withhold any of the information at issue under section 552.108 of the Government Code.

We note some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 applies to information the city does not hold in an employment context that concerns the following individuals:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;
- (8) police officers and inspectors of the United States Federal Protective Service; and
- (9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement.

Gov't Code § 552.1175(a). If the information at issue concerns an individual listed in section 552.1175(a), then section 552.1175(b) protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of that individual, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175(b). We note a post office box number is not a "home address" for purposes of section 552.1175. *See Open Records Decision No. 662 at 6 (1994)*. We have marked information the county must withhold under section 552.1175 of the Government Code if the individuals to whom the information pertains are individuals described by subsection 552.1175(a), the information falls within the scope of

subsection 552.1175(b), and the individuals elect to restrict access to their information in accordance with subsection 552.1175(b). If the individuals whose information is at issue are not individuals described by subsection 552.1175(a), the information does not fall within the scope of subsection 552.1175(b), or no election is made, the county may not withhold the information we have marked under section 552.1175 of the Government Code.

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.1175 of the Government Code, if the individuals to whom the information pertains are individuals described by subsection 552.1175(a) of the Government Code, the information falls within the scope of subsection 552.1175(b) of the Government Code, and the individuals elect to restrict access to their information in accordance with subsection 552.1175(b) of the Government Code. 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.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 518192

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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