



February 12, 2015

Ms. Marlene K. Sparkman
General Counsel
Texas State Securities Board
P.O. Box 13167
Austin, Texas 78711-3167

OR2015-02798

Dear Ms. Sparkman:

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# 554232.

The Texas State Securities Board (the "board") received a request for the personnel file of a named employee, including performance reviews and complaints. You state the board has released some information to the requestor, with redactions made pursuant to sections 552.024 and 552.130 of the Government Code and Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117(a)(1) of the Government Code without requesting a decision from this office if the current or former employee or official timely chooses not to allow public access to the information. *See* Gov't Code §§ 552.024(c), .117. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public subject to section 552.137 of the Government Code.

Initially, we note the requestor has excluded from the scope of his request the following types of information: social security numbers, dates of birth, home addresses, and medical information. Accordingly, we find these types of information are not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the board need not release non-responsive information to the requestor.²

Section 552.101 of the Government Code excepts “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 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 excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and 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), 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). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, we find no portion of the remaining information at issue is highly intimate or

²As we are able to make this determination, we need not address your arguments against release of this information.

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

embarrassing and of no legitimate public concern. Accordingly, the board may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You have provided election forms completed by the named employee, in which she elected to keep the information at issue confidential. Accordingly, the board must withhold the information you have highlighted, and the additional information we have marked, within the remaining responsive information under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code provides, in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding any other provision of this chapter, 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(a)-(b). You assert the information in Exhibits D4, D5, and D7 is excepted in its entirety under section 552.136 of the Government Code. Alternatively, you assert the information you have highlighted in these exhibits is excepted under section 552.136. You state a portion of the information at issue consists of login information for employees to access their accounts in Web CRD, which consists of the central licensing and registration system for the securities industry and its regulators. You state regulators use

the system to share information with each other and you indicate this is a subscription based service. Accordingly, we find the login information you have highlighted consists of access device numbers for the purposes of section 552.136. Additionally, the remaining information at issue includes credit card numbers. Upon review, we find the board must withhold the information you have highlighted, as well as the additional information we have marked, under section 552.136 of the Government Code. However, we find you have not explained how the remaining information at issue consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 to the information at issue and the board may not withhold the remaining information at issue on the basis of section 552.136 of the Government Code.

In summary, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The board must withhold the information you have highlighted, and the additional information we have marked, within the remaining responsive information under section 552.117(a)(1) of the Government Code. The board must withhold the information you have highlighted, as well as the additional information we have marked, under section 552.136 of the Government Code. The board must release the remaining responsive 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.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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 554232

Enc. Submitted documents

c: Requestor
(w/o enclosures)