



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Ms. Angelique Weaver
Counsel for North & East Lubbock Community Development Corporation
Mayfield Law Firm, L.L.P.
1001 Main Street, Suite 504
Lubbock, Texas 79401

OR2015-11401

Dear Ms. Weaver:

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# 566598.

The North and East Lubbock Community Development Corporation (the "corporation"), which you represent, received five requests from the same requestor for (1) copies of all annual audits of the corporation for a specified time period; (2) all claims information relating to the corporation's crime insurance during a specified time period; and (3) copies of all credit card, debit card, procurement card receipts, and detailed transaction statements for specified time periods. You state the corporation has released the information responsive to category one to the requestor. You claim some of the submitted information is not subject to the Act. You claim the remaining submitted information is excepted from disclosure under sections 552.108 and 552.136 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information, a portion of which constitutes representative samples.²

¹We note the district did not timely raise section 552.136 of the Government Code pursuant to section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.136 can provide a compelling reason to overcome the presumption of openness, we will consider your claim under section 552.136 for the submitted information. *See id.* §§ 552.007, .302, .352.

²We 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.

Initially, we note, and you acknowledge, this office previously determined, in Open Records Letter Nos. 2014-06465 (2014), 2014-04182 (2014), and 2014-04140 (2014), the corporation is a governmental body to the extent it is directly supported by public funds. You contend the information you have indicated is not subject to the Act because it pertains to the operations of the corporation that were not directly supported by public funds. Based on your representation and our review, we find the information you have indicated is not subject to the Act because it pertains to the operations of the corporation that were not directly supported by public funds. *See* Gov't Code § 552.003(1)(A)(xii); *see also* Open Records Decision No. 602 (1992) (only records of those portions of the Dallas Museum of Art that were directly supported by public funds are subject to Act). Thus, the information that is not subject to the Act need not be released in response to the present requests for information.³

Next, we note the submitted information contains information that is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher or contract relating to the receipt or expenditure of public or other funds by a governmental body; [.]

Gov't Code § 552.022(a)(3). Some of the information at issue is subject to section 552.022(a)(3). The corporation asserts the information subject to section 552.022 is excepted from release under section 552.108 of the Government Code. However, this section is discretionary and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the corporation may not withhold the information subject to section 552.022(a)(3), which we have marked, under section 552.108. However, because section 552.136 makes information confidential for purposes of section 552.022, we will consider the applicability of section 552.136 to the information subject to section 552.022 of the Government Code. Further, we will address the corporation's arguments for the information not subject to section 552.022.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

³As we are able to make this determination, we need not address the corporation's arguments against disclosure of this information.

prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” However, section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You inform us, and have provided documentation reflecting, the Texas Rangers object to disclosure of the information you have indicated because its release would interfere with an ongoing criminal investigation. Based on this representation and our review, we conclude the corporation may withhold the information you have indicated that is not subject to section 552.022(a)(3) under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.⁴ *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.136 of the Government Code provides, “[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); *see id.* § 552.136(a) (defining “access device”). You indicate you will redact bank account, credit card, and debit card numbers within the information at issue. We note this office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Therefore, we find the corporation also must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).⁵ *See id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address a governmental entity maintains for one of its officials or employees. Upon review, to the extent the e-mail

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

addresses are not subject to subsection (c), we find the corporation must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to public disclosure of their e-mail addresses.

In summary, the information you have indicated is not subject to the Act and need not be released in response to the present requests for information. The corporation may withhold the information you have indicated that is not subject to section 552.022(a)(3) under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers. The corporation must withhold the bank account, credit card, and debit card numbers you have indicated, in addition to the insurance policy numbers we have marked, under section 552.136 of the Government Code. To the extent the e-mail addresses are not subject to subsection (c), we find the corporation must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to public disclosure of their e-mail addresses. The corporation must release the remaining 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 566598

Enc. Submitted documents

c: Requestor
(w/o enclosures)