



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Mr. Brendan W. Guy
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901-8085

OR2015-13104

Dear Mr. Guy:

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# 569303.

The Victoria County Criminal District Attorney's Office (the "district attorney's office") received a request for information concerning the setting of an execution date for prisoners executed between January 1, 2010, and April 15, 2015. We understand you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). We agree the district attorney's office must withhold the e-mail addresses it marked in the submitted information, as well as the e-mail address we marked, under section 552.137 of the

Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.

Section 552.101 of the Government Code excepts from public 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. Common-law privacy 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note addresses and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find you have failed to demonstrate how the information you marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district attorney’s office may not withhold any of the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, section 552.1175 of the Government Code may apply to some of the information at issue.¹ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or information that reveals whether the individual has family members, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Therefore, if an election was made to restrict access to personal information in accordance with section 552.1175(b), the district attorney’s office must withhold the information we marked under section 552.1175 of the Government Code.

In summary, the district attorney’s office must withhold the marked e-mail addresses in the submitted information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. If the district attorney’s office determines an election was made to withhold personal information, the district attorney’s office must withhold the information we marked under section 552.1175 of the Government Code. The district attorney’s office must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen Hattaway
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 569303

Enc. Submitted documents

c: Requestor
(w/o enclosures)