



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 21, 2015

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, Third Floor  
Richmond, Texas 77469

OR2015-19629

Dear Mr. Grove:

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# 579855.

The Fort Bend County Constable, Precinct 3 (the "constable's office") received a request for information pertaining the purchase of specified items and information pertaining to anonymous donor information. You state the constable's office will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 also 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,

---

<sup>1</sup>Although you do not raise section 552.136 of the Government Code in your brief, we understand you to claim this exception based on your markings in the submitted information.

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, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the constable's office has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the constable's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

The constable's office also contends the donor's identity is excepted from disclosure under section 552.101 of the Government Code in conjunction with the holding of the Texas Supreme Court in *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998). In that decision, the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization's list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). “[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.*

*Bay Area Citizens*, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that “the burden must be light.” *Id.* at 376. Quoting the United State Supreme Court's decision in *Buckley v. Valeo*, 424

U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show “a reasonable probability that the compelled disclosure of a party’s contributors’ names will subject them to threats, harassment, or reprisals from either Government officials or private parties.” *Id.* Such proof may include “specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself.” *Id.*

The constable’s office has submitted information pertaining to a financial transaction concerning a donor and private third party recipients. You inform us the donor purchases gifts to be delivered to local churches and organizations. You state the constable’s office facilitates the collection and delivery of these gifts between parties and does not receive money from the donor to purchase the donations. The constable’s office argues release of the donor’s identity will discourage future contributions and produce a financial injury to the gift recipients. Although the constable’s office states revealing the donor’s identity would have a chilling effect, it has not offered any adequate evidence of past or present harassment of the donor due to its association with various charitable groups. Accordingly, we conclude the constable’s office may not withhold the identity of the donor under the right of association.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.<sup>2</sup> Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the constable’s office must withhold the information we marked under section 552.117(a)(2); however, the constable’s office may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body.

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”). Upon review, the constable’s office must withhold the information we marked under section 552.136 of the Government Code.

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

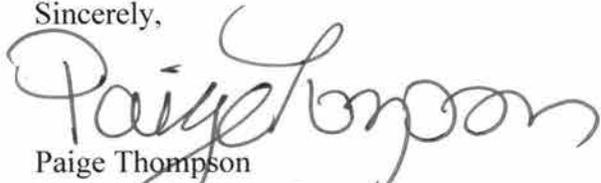
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail 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, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the constable’s office must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, the constable’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable’s office must withhold the information we marked under section 552.117(a)(2); however, the constable’s office may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. The constable’s office must withhold the information we marked under section 552.136 of the Government Code. The constable’s office must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. The constable’s office 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](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 Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 579855

Enc. Submitted documents

c: Requestor  
(w/o enclosures)