



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2016

Mr. David Sewell
Counsel for the Ponderosa Volunteer Fire Association
Hirsch & Westheimer
1415 Louisiana, 36th Floor
Houston, Texas 77002

OR2016-16228

Dear Mr. Sewell:

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# 619242.

The Ponderosa Volunteer Fire Association (the "association"), which you represent, received a request for all e-mails sent or received by a named individual during a specified time period. You indicate the association is withholding social security numbers pursuant to section 552.147(b) of the Government Code.¹ You argue some of the submitted information does not consist of public information subject to the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130,

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

and 552.139 of the Government Code.² We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, you state the association would have to review over 4,500 e-mails to respond to this portion of the request. We note the administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). Further, a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted information responsive to the request and have raised arguments against disclosure of this information, we will address the applicability of the submitted arguments for the submitted information.

Next, you argue some of the submitted information is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002(a) of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

²You inform us the association sought clarification or narrowing of the requested information. *See* Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state the requestor responded to the association’s requests for narrowing, but did not narrow the request. However, you do not inform us the date the requestor last responded to the association’s requests for narrowing. Thus, we understand the association received the request for information on April 13, 2016. Upon review, we find the association did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

³We 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.

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You inform us the information submitted as Category 1 consists of e-mails that are purely personal in nature and do not concern the business of the association. You state the information submitted as Category 3 consists of e-mails related to the named individual's position on the Commission on Professional Credentialing, an entity unrelated to the association, that are not maintained by the named individual in his official capacity. You state the information submitted as Category 4 consists of e-mails related to the named individual's position in the International Association of Fire Chiefs Volunteer and Combination Officers Section. You state this is an entity unrelated to the association, and you state the e-mails at issue are not maintained by the named individual in his official capacity. Finally, you argue the information submitted as Category 8 is not subject to the Act because the information pertains to the business of the Emergency Services District 28, which is a separate entity, and not to the business of the association. You argue this information was not written, produced, collected, or assembled, and is not maintained, pursuant to any law or ordinance or in connection with the transaction of the association's business. Based on your representations and our review of the information at issue, we find this information does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the association. *See* Gov't Code § 552.002. Therefore, we conclude the information submitted as Categories 1, 3, 4, and 8 does not constitute public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 7 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Accordingly, the association is not required to release that information in response to the request for 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 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). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. See Attorney General Opinion GA-0572 at 3-5 (2007) (net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to public). 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). You argue the information submitted as Category 2 is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find some of the information at issue, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the association must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the association may not withhold any portion of the remaining information under section 552.101 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). Upon review, however, we find no portion of the information you seek to withhold on this basis consists of the home address, telephone number, emergency contact information, social security number, or family member

information of a current or former employee of the association, and the association may not withhold any of the remaining information under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the information submitted as Category 6, which we have marked, consist of motor vehicle record information. Accordingly, the association must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, you have not demonstrated any of the remaining information at issue consists of motor vehicle record information for purposes of section 552.130, and the association may not withhold any of the remaining information on that basis.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state the information submitted as Category 5 relates to the association's computer network security and the design, operation, and defense of the association's computer network. You indicate release of the information would undermine the security of information technology and increase the possibility of cyber attacks against the association by providing information about the layout, security features, and structure of information used by the association. Based on your argument and our review of the information, we find the information at issue relates to computer network security, and the design, operation, or defense of the association's computer network. Accordingly, the association must withhold the information submitted as Category 5 under section 552.139 of the Government Code.

In summary, the information submitted as Categories 1, 3, 4, and 8 does not constitute public information for purposes of section 552.002 of the Government Code and the association is not required to release that information. The association must withhold the information we marked within the information submitted as Category 2 under section 552.101 of the Government Code in conjunction with common-law privacy. The association must withhold the information submitted as Category 5 under section 552.139 of the Government Code. The association 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 619242

Enc. Submitted documents

c: Requestor
(w/o enclosures)