



January 9, 2015

Mr. Jeffrey L. Moore
Counsel for the Paris Economic Development Corporation
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-00431

Dear Mr. Moore:

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# 549445.

The Paris Economic Development Corporation (the "PEDC"), which you represent, received a request for all documents and results of a specified investigation pertaining to a named individual. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. You provide documentation showing you notified an interested third party of the receipt by the PEDC of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.

Initially, we address your argument the Internet Protocol ("IP") addresses you have marked in the submitted information do not constitute public information for purposes of the Act. In Open Records Decision No. 581 (1990), this office determined certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation

information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor statute). Upon review, we determine because the IP addresses you have marked are that of third parties and not of the PEDC, we find the IP addresses are not information used for the maintenance, manipulation, or protection of public property. Accordingly, we find the IP addresses you have marked are subject to the Act and must be released, unless they fall within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002 (a), .021.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. 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. 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). This office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the PEDC 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 failed to demonstrate the remaining

information is highly intimate or embarrassing information and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the PEDC must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the PEDC may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the employee whose information is at issue timely elected to keep such information confidential under section 552.024, the PEDC must withhold any current and former home addresses and telephone numbers, social security number, and family member information of the employee at issue under section 552.117(a)(1) of the Government Code; however, a cellular telephone number of the employee may be withheld only if a governmental body does not pay for the cellular telephone service. If the employee did not make a timely election under section 552.024, the PEDC may not withhold this information under section 552.117(a)(1) of the Government Code. Furthermore, we find the information beyond the current and former home addresses and telephone numbers, social security number, and family member information of the employee at issue is not confidential under section 552.117(a)(1), and the PEDC may not withhold any of it on that basis.

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. Accordingly, the PEDC must

withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states “[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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the PEDC must withhold the routing and bank account numbers you 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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not of types excluded by subsection (c). Accordingly, the PEDC must withhold the e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

You state the PEDC will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ Section 552.147 of the Government Code provides “the social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). We note section 552.147 does not apply to the social security number of a deceased individual. Upon review, we find the PEDC may withhold the social security numbers of living individuals under section 552.147(a) of the Government Code.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why its information should not be released. Thus, we have no basis to conclude the release of the information at issue would implicate the interest of any third party, and none of the information at issue may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

¹You state the PEDC will redact social security numbers pursuant to section 552.147(b) of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See Gov’t Code* § 552.147(b).

In summary, the PEDC must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The PEDC must withhold the date of birth we marked under section 552.102(a) of the Government Code. To the extent the employee whose information is at issue timely elected to keep such information confidential under section 552.024, the PEDC must withhold any current and former home addresses and telephone numbers, social security number, and family member information of the employee at issue under section 552.117(a)(1) of the Government Code; however, a cellular telephone number of the employee may be withheld only if a governmental body does not pay for the cellular telephone service. The PEDC must withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code. The PEDC must withhold the routing and bank account numbers you marked under section 552.136 of the Government Code. The PEDC must withhold the e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners affirmatively consents to their release. The PEDC may withhold the social security numbers of living individuals under section 552.147(a) of the Government Code. The PEDC 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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 549445

Enc. Submitted documents

c: Requestor
(w/o enclosures)