



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2017

Sheriff Danny C. Dominguez
Presidio County Sheriff's Office
P.O. Drawer V
Marfa, Texas 79843

OR2017-07176

Dear Sheriff Dominguez:

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# 652078.

The Presidio County Sheriff's Office (the "sheriff's office") received a request for financial statements and certificates related to West Texas Bail Bonds ("West Texas"). You state the sheriff's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of West Texas and A-Quick Out Bail Bonds. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted 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 also received and considered comments from the requestor. *See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).* We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *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. Accordingly, the sheriff's office may not withhold the submitted information on the basis of any proprietary interest any third party may have in the 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 the 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). In addition, this office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (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), 523 (1989). However, whether financial information is of legitimate public interest, and therefore not protected by common-law privacy, must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In this case, the submitted information consists of financial information provided to the sheriff's office by an individual for the purpose of obtaining approval of a bail bond license. Because the information was used by the sheriff's office to assess the status of bail bond licensure, we find there is a legitimate public interest in this information. *See* ORD 600 (legitimate public interest exists in facts about a financial transaction between individual and governmental body). Therefore, this information is not confidential under common-law privacy and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state release of the submitted information may be harmful to the third parties at issue. However, while you argue release of the submitted information would harm these third parties by giving an advantage to their competitors, such an interest in protecting the information belongs to the third parties and not the sheriff’s office. Upon review, we find the sheriff’s office may not withhold any of the submitted information under section 552.104(a) of the Government Code. As no further exceptions to disclosure have been raised, the sheriff’s office must release the submitted 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 652078

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)