



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2017

Ms. Julia Benitez Sullivan
Director
Public Affairs Division
Hidalgo County
100 East Cano Street, 1st Floor
Edinburg, Texas 78539

OR2017-14766

Dear Ms. Sullivan:

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# 664659 (File No. 2017-248).

Hidalgo County (the "county") received a request for information pertaining to county employee travel expenditures. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of the Hidalgo County Community Supervision and Corrections Department ("CSCD").¹ Accordingly, you have notified CSCD of the request pursuant to section 552.304 of the Government Code.² *See* Gov't Code § 552.304 (interested party may

¹We note, and you acknowledge, the county failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* § 552.302. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the county's violation of section 552.301 in requesting this decision.

²As of the date of this letter, we have not received comments from CSCD explaining why the submitted information should not be released.

submit comments stating why information should or should not be released). We have reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁴ 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, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects 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 also concluded some kinds of medical information are generally highly intimate or embarrassing. Upon review, we find portions of the submitted information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county must withhold the information we marked under section 552.101 of the Government Code 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). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a

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 that those records contain substantially different types of information than that submitted to this office.

⁴This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals whose information is at issue did not timely request confidentiality under section 552.024, the county may not withhold the marked 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Therefore, the county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the county must withhold the bank account, routing, credit card, and insurance policy numbers in the remaining information 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). *See id.* § 552.137(a)-(c). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). Accordingly, the county must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consent to its release.

In summary, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The county must withhold the bank account, routing, credit card, and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The county must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consent to its release. The county 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/nmd

Ref: ID# 664659

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)