



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2019

Ms. Paige Saenz
Counsel for the City of Leander
The Knight Law Firm, L. L. P.
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2019-23438

Dear Ms. Saenz:

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# 780628.

The City of Leander (the "city"), which you represent, received a request for e-mails to or from a named city official during a specified time period. You assert some of the requested information does not consist of information subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.136, and 552.139 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it was created after the city received the present request. This ruling does not address the public availability of the non-responsive information, which we marked, and the city need not release it in response to this request.¹

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

¹ As we are able to make this determination, we need not address your arguments against the disclosure of this information.

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. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 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). Upon review, we conclude the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.136(b) 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, we agree the city must withhold the customer account number we marked under section 552.136 of the Government Code.

Section 552.139 of the Government Code provides:

(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; [and]

(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[.]

Id. § 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.

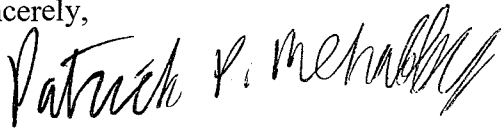
Id. § 2059.055(b). You assert section 552.139 for Exhibit E. However, upon review, we find you failed to establish section 552.139 applies to Exhibit E. Accordingly, the city may not withhold any portion of Exhibit E under section 552.139 of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.136 of the Government Code. The city must release the remaining responsive 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/eb

Ref: ID# 780628

Enc. Submitted documents

c: Requestor
(w/o enclosures)