



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-29084

Dear Ms. Lary:

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# 789189.

Fort Bend County (the "county") received two requests from the same requestor for personal financial statements of seven named individuals. You state the county does not have some of the requested information.¹ You state the county released some information with redactions. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² Although the county also raises section 552.102 of the Government Code, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume the county no longer asserts this exception. *See Gov't Code* §§ 552.301, .302.

You inform us the submitted information consists of personal financial statements filed with the county clerk pursuant to chapter 159 of the Local Government Code.³ This chapter governs the public availability of the financial disclosure statements filed by certain county officers and employees. Subchapter A applies to a county officer or candidate for county officer of a county with a population of 100,000 or more or a justice of the peace or candidate for justice of the peace of a county with a population of 125,000 or more. Local Gov't Code § 159.001. We note the county has a population of 125,000 or more. Section 159.003 is part of subchapter A and provides that a county officer, candidate for county office, justice of the peace, or candidate for justice of the peace must file a financial statement with the county clerk of the county in which the officer, justice, or candidate resides that complies with sections 572.022 and 572.023 of the Government Code and any county commissioners court order requiring additional disclosures.⁴ *Id.* § 159.003(a)-(b); *see also id.* § 159.002 (defining “county officer” as a county judge, county commissioner, or county attorney for purposes of subchapter A). Financial statements filed under subchapter A are public records and are “accessible to the public during regular office hours.” *Id.* § 159.007(a).

You have submitted personal financial statements of county officers and a justice of the peace. Although you seek to withhold portions of these statements under section 552.117 of the Government Code, the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Additionally, although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for some of the information at issue, a specific statutory right of access prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Therefore, the county may not withhold any of the information contained in the financial statements at issue under section 552.117 of the Government Code or section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining financial statement pertains to a county court at law judge. Section 159.052 is part of subchapter C of chapter 159 of the Local Government and provides that a county judicial officer or a candidate for office as a county judicial officer must file a financial statement with the county clerk or the Texas Ethics Commission that complies with sections 572.022 and 572.023 of the Government Code. Local Gov't Code § 159.052. Section 159.051 defines “county judicial officer” as the judge of a statutory county court or

³ Although you state the submitted personal financial statements were filed pursuant to chapter 145 of the Local Government Code, we note a personal financial statement filed with the county clerk is made pursuant to chapter 159 of the Local Government Code.

⁴ Section 572.022 of the Government Code provides reporting categories. Gov't Code § 572.022. Section 572.023 of the Government Code provides that the financial statements must contain an account of financial activity of the individual as well as the activity of the individual's spouse and dependent children if the individual had actual control over the activity. *Id.* § 572.023(a). Section 572.023(b) lists information that is to be included in the account of financial activity. *Id.* § 572.023(b).

statutory probate court. *Id.* § 159.051(2); *see also* Tex. Const. art. V, § 1 (providing “Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof[.]”); *cf.* Gov’t Code § 21.009 (defining “statutory county court” as county court created by legislature under Article V, Section 1, of the Texas Constitution and including county courts at law). Section 159.055 of the Local Government Code provides, in relevant part, the following:

(a) Except as provided by Subsection (b), a financial statement filed under [Subchapter C] or a document filed under Section 159.052(b) is a public record. The county clerk or the commission shall maintain the financial statements or documents in a manner that is accessible to the public during regular business hours.

(b) The county clerk or the commission shall remove the officer’s or candidate’s home address and the names of the officer’s or candidate’s dependent children from the officer’s or candidate’s financial statement and any county or commission record derived from the financial statement before the statement or record is made available to a member of the public.

Local Gov’t Code § 159.055(a); Act of May 10, 2019, 86th Leg., R.S., ch. 137 (H.B. 1872), § 2 (to be codified at Local Gov’t Code § 159.055(b)). Thus, the remaining personal financial statement of the statutory county court judge is expressly made public by section 159.055(a). *See* Local Gov’t Code § 159.055(a). As noted above, the exceptions found in the Act generally do not apply to information that is made public by other statutes, and a specific statutory right of access prevails over the common law. *See* ORDs 623 at 3, 525 at 3; *Collins*, 297 S.W.3d at 415. Therefore, the county may not withhold any of the information contained in the financial statement at issue under section 552.117 of the Government Code or section 552.101 of the Government Code in conjunction with common-law privacy. However, section 159.055(b) provides the home address and the names of the officer’s or candidate’s dependent children must be removed from the officer’s or candidate’s financial statement prior to making the statement available to a member of the public. *See* Act of May 10, 2019, 86th Leg., R.S., ch. 137 (H.B. 1872), § 2. Accordingly, the county must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 159.055(b) of the Local Government Code.

In summary, the county must release the financial statements of the county judge, the county commissioners, and the justice of the peace in their entireties pursuant to section 159.007 of the Local Government Code. The county must release the financial statement of the statutory county court judge pursuant to section 159.055(a) of the Local Government Code; in releasing the financial statement of the statutory county court judge, the county must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 159.055(b) of the Local Government Code.

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 789189

Enc. Submitted documents

c: Requestor
(w/o enclosures)