



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2019

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2019-34935

Dear Ms. Parker:

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# 803501.

The Texas Department of Transportation (the "department") received a request for information pertaining to the roadwork, maintenance, or construction related to the installation and maintenance of a specified portion of a highway, including any diagrams, construction companies utilized, employees and schedules. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to the contractor's payroll records. Although you state you have submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with the requirements of Gov't Code § 552.301, information at issue is presumed to be public). To the extent any additional information responsive to this request existed and was maintained by the department on the date the department received the request, we assume the

department has released it. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it is (1) highly intimate or embarrassing, 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 to be intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Prior decisions of this office have determined personal financial information not related to a transaction between an individual and a governmental body generally meets the first prong of the common-law privacy test. *See generally* Open Records Decision No. 600 (1992). However, whether financial information is subject to a 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).

You state the submitted certified payroll records pertain solely to transactions between a highway project's contractors, subcontractors, and their employees. You inform this office federal law provides, as a requisite to the receipt of federal funding for the construction projects at issue, the department must receive and retain payroll records from its contractors and subcontractors so the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other federal agencies can audit those records to ensure the contractors' and subcontractors' compliance with applicable federal wage regulations. *See* 23 C.F.R. § 635.118. Additionally, you inform this office the department has not itself used the payroll records for any public purpose, other than receiving and retaining them for review by a federal agency. Upon review, we find the submitted certified payroll records satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, based upon these facts, we conclude there is no legitimate public interest in release of the submitted certified payroll records at this time. Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script that reads "D. Michelle Case". The signature is written in black ink and includes a long horizontal flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/rm

Ref: ID# 803501

Enc. Submitted documents

c: Requestor
(w/o enclosures)