



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2020

Mr. Tommy L. Coleman
Assistant District Attorney
Polk County
101 West Mill Street, Suite 247
Livingston, Texas 77351

OR2020-10436

Dear Mr. Coleman:

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# 821615.

Polk County (the "county") received a request for information related to inmate housing reimbursements during a specified time period. The county argues some of the submitted information does not consist of public information subject to the Act. The county claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, the county contends the booking identification numbers contained in the submitted information are not subject to disclosure under the Act. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. ORD 581 at 5. Upon review, however, we find the booking identification numbers at issue are maintained for purposes other than their use as a tool for the maintenance, manipulation, or protection of public property. We further note the information at issue was written, produced, collected, assembled, or maintained in connection with the transaction of the county's official business. Accordingly, we find this information is subject to the Act and the county must release it unless the county demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Id. § 552.022(a)(3). The submitted information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the county that is subject to section 552.022(a)(3). This information must be released unless it is made

confidential under the Act or other law. *See id.* The county seeks to withhold the information at issue under section 552.108 of the Government Code. However, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the county may not withhold the submitted information under section 552.108 of the Government Code. However, as section 552.101 of the Government Code applies to confidential information, we will consider the county's argument under section 552.101 against disclosure of the submitted 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. Upon review, we find the county has not demonstrated any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the county may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. The county 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 <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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 821615

Enc. Submitted documents

c: Requestor
(w/o enclosures)