



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2020

Ms. Tiffany Bangs
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2020-24614

Dear Ms. Bangs:

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# 843984 (C.A. File No. 20PIA0414).

The Harris County Attorney's Office (the "county attorney's office") received a request for price gouging reports the county received pertaining to a specified topic. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

¹ Although you also raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this argument. See Gov't Code §§ 552.301, .302.

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). Section 552.108(a)(4)(A) protects information that was prepared by an attorney for the state in anticipation of litigation, while section 552.108(a)(4)(B) protects information that reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d at 710. Upon review, we find you have failed to demonstrate the submitted information was prepared by the county attorney's office in anticipation of or in the course of preparing for criminal litigation or represents the mental impression or legal reasoning of an attorney representing the state. Therefore, the county attorney's office may not withhold the submitted information under section 552.108(a)(4) 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* Gov't Code. § 552.137(a)-(c). Therefore, the county attorney's office must withhold the personal e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure or subsection (c) applies.²

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note some of the remaining information pertains to individuals who are now de-identified and whose privacy interests are, thus, protected. Further, we find the county attorney's office has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the county attorney's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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 personal identification document issued by an agency of this state or another state or country is excepted from public release.³ See Gov't Code § 552.130. Accordingly, the county attorney's office must withhold the motor vehicle record information we 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"). Accordingly, the county attorney's office must withhold the partial debit and credit card numbers we have marked under section 552.136 of the Government Code.

In summary, the county attorney's office must withhold the personal e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure or subsection (c) applies. The county attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The county attorney's office must withhold the partial debit and credit card numbers we have marked under section 552.136 of the Government Code. The county attorney's office 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 <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

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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,

Pearlie Gault
Attorney
Open Records Division

PG/jm

Ref: ID# 843984

Enc. Submitted documents

c: Requestor
(w/o enclosures)