



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2022

Ms. Leigh Ann Tognetti  
Assistant District Attorney  
Hidalgo County  
100 East Cano Street  
Edinburg, Texas 78539

OR2022-04769

Dear Ms. Tognetti:

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# 928358 (Ref. No. 2021-184-DA.CO).

Hidalgo County (the "county") received a request for a list of individuals who received funds from two specified sources during a stated period of time, as well as the amounts each individual received. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the Texas Department of Housing and Community Affairs (the "department"). Accordingly, you state, and provide documentation showing, the county notified the department of the request for information and of its right to submit arguments to this office.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you state the county does not maintain the requested information in the format sought by the requestor. 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). However, a governmental body does have a duty to make a good-faith effort to relate a request for information to information

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<sup>1</sup> As of the date of this letter, we have not received comments from the department.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Thus, documents in any format from which the information responsive to the request may be derived are responsive to the request. In this instance, you have submitted information and have made arguments against its disclosure. Thus, we assume the county has made a good-faith effort to relate this request to information it holds, and we will address the applicability of your arguments against disclosure of the submitted information.

Section 552.160 of the Government Code provides, in relevant part:

(b) Except as provided by Subsection (c), the following information maintained by a governmental body is confidential:

(1) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds;

(2) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; [and]

(3) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds.

(c) The street name and census block group of and the amount of disaster recovery funds awarded to a person or household are not confidential after the date on which disaster recovery funds are awarded to the person or household.

Gov't Code § 552.160(b), (c); *see also id.* § 552.160(a); *id.* § 418.004(1) (defining "disaster" for purposes of section 552.160).<sup>3</sup> We understand the submitted information consists of information pertaining to individuals and households who applied for disaster recovery assistance. We note the information at issue contains the amounts of disaster recovery funds awarded to certain individuals. Upon review, we find section 552.160 is applicable to some of the submitted information. Accordingly, the county must generally withhold the information we have marked under section 552.160 of the Government Code. We note, with respect to the information we indicated, we are unable to determine whether disaster recovery funds have been awarded to some of the individuals at issue. Thus, we must rule conditionally with respect to the information we indicated. Accordingly, to the extent disaster recovery funds have been awarded to the individuals at issue, the county must release these individuals' street names, which we have indicated, and withhold the remainder of the information we have marked under section 552.160 of the Government Code.<sup>4</sup>

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup> As our ruling is dispositive, we need not address your arguments against disclosure of this information.

We understand you to assert the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 1.24 and 1.409 of title 10 of the Texas Administrative Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information made confidential by other statutes. Section 1.24(f) provides that a contractor must notify the department within three calendar days following the receipt of a request for information made pursuant to the Act. 10 T.A.C. § 1.24(f); *see also id.* § 1.24(b)(3) (defining “contractor” as any third party, including funding agencies, vendors, or subrecipients, that may gain access to protected information pursuant to a contract with the department), (16) (defining “subrecipient” as an organization with whom the department contracts, and entrusts to administer federal or state programs or funds, including units of local government). As noted above, the county notified the department of the present request for information. However, we note section 1.24(f) does not expressly make information confidential for purposes of the Act. Section 1.409 details the procedures for the retention of records. Section 1.409(a) provides, in part, “[c]onfidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference.” *Id.* § 1.409(a). We note, in order for section 552.101 of the Government Code to apply, a statute must contain language expressly making certain information confidential; confidentiality cannot be implied from the structure of a statute or rule. *See Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987).* While section 1.409 provides that subrecipients must maintain confidential information contained in client files “in a manner to protect the privacy of each client and to maintain the same for future reference[,]” this provision does not, itself, make information confidential for purposes of the Act. Therefore, we find you have failed to demonstrate the information at issue is made confidential under section 1.24(f) or section 1.409 of title 10 of the Texas Administrative Code, and the county may not withhold any portion of the remaining information under section 552.101 of the Government Code on those bases.

Section 552.101 of the Government Code also 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 also 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. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transactions between individual and governmental body protected under common-law privacy).* Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987).*

Further, the Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Upon review, we find some of the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the information at issue pertains to individuals who will be de-identified by our markings under section 552.160 of the Government Code; thus, these individuals' privacy interests are protected and the county may not withhold information pertaining to them under section 552.101 on the basis of common-law privacy. Additionally, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the county may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent disaster recovery funds have been awarded to the individuals at issue, the county must release these individuals' street names, which we have indicated, and withhold the remainder of the information we have marked under section 552.160 of the Government Code. The county 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 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 928358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)