



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2022

Mr. Anthony Paul
Assistant District Attorney
Denton County
P.O. Box 2344
Denton, Texas 76202

OR2022-12800

Dear Mr. Paul:

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# 945713 (PIR 22-216).

The Denton County Human Resources (the "county") received a request for information pertaining to a specified individual. The county claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c). Therefore, to the extent the submitted information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the county is not required to release it in response to the request.

Section 552.101 of the Government Code excepts from disclosure "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 generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 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 transaction between individual and governmental body protected under common-law privacy). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545. Further, we note the requestor is the spouse of the of the individual whose information is at issue and may have a right of access to her spouse's information under section 552.023 of the Government Code as his authorized representative. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning themselves).

Upon review, we find the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, to the extent the requestor is not acting as her spouse's authorized representative the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, if the requestor is acting as her spouse's authorized representative, the county may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, to the extent the requestor is acting as her spouse's authorized representative we will consider the county's arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 815.503(a) of the Government Code, which provides, in part:

Records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by [the Employees Retirement System ("ERS")] that are in the custody of [ERS] or of an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of [ERS] are confidential and not subject to public disclosure, and [ERS], administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the provisions of [the Act], except as otherwise provided by this section.

Gov't Code § 815.503(a). The county generally asserts section 815.503(a) of the Government Code. However, the county does not indicate it maintains any of the information at issue as “an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of” ERS. *Id.* Therefore, we are unable to conclude any of the information at issue constitutes “[r]ecords . . . that are in the custody of [ERS] or of an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of” ERS. *Id.* Thus, section 815.503 does not make any of the information at issue confidential. Accordingly, the county may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 815.503(a) of the Government Code.

Section 552.101 of the Government Code also encompasses section 1551.063 of the Insurance Code, which provides:

- (a) The records of a participant in the group benefit program in the custody of the board of trustees, or of an administrator or carrier acting on behalf of the board, are confidential and not subject to disclosure, and the board is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, Government Code, except as provided by this section.
- (b) The records may be released to a participant or to an authorized attorney, family member, or representative acting on behalf of the participant.
- (c) The board of trustees may release the records to:
 - (1) an administrator, carrier, agent, or attorney acting on behalf of the board;
 - (2) another governmental entity;
 - (3) a medical provider of the participant to accomplish the purposes of this chapter; or
 - (4) a party in response to a subpoena issued under applicable law.
- (d) The records of a participant remain confidential after release to a person as authorized by this section.
- (e) The records of a participant may become part of the public record of an administrative or judicial proceeding related to a contested case under this chapter unless the records are closed to public access by a protective order issued under applicable law.

Ins. Code § 1551.063(a). The county generally asserts section 1551.063 of the Insurance Code. However, the county does not indicate it maintains any of the information at issue as “an administering firm, carrier, or another governmental entity acting on behalf of [ERS].” Therefore, we are unable to conclude any of the information at issue constitutes

“[r]ecords . . . in the custody of [ERS], or of an administering firm, carrier, or other governmental entity acting on behalf of [ERS].” Thus, section 1551.063 does not make any of the information at issue confidential. Accordingly, the county may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 1551.063 of the Insurance Code.

In summary, to the extent the submitted information consists of records of a participant in a retirement system’s retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the county is not required to release it in response to the request. To the extent the requestor is not acting as her spouse’s authorized representative the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is acting as her spouse’s authorized representative the county must release the submitted information.¹

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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 945713

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ We note the requestor may have a right of access to some of the information being released in this instance. See Gov’t Code § 552.023(a); ORD 481 at 4. Thus, if the county receives another request for the same information from a different requestor, the county must again seek a decision from this office.