



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2022

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

OR2022-14580

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# 948755 (File No. 2022-0032-DA.CO).

Hidalgo County (the "county") received a request for information relating to a previous public information request. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.131, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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 financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally

of legitimate public interest. *See* ORDs 600, 523. Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to a retirement program. *See* ORD 600. On the other hand, information is excepted from disclosure if it relates to a voluntary investment the employee made in an optional benefits plan offered by the agency. *Id.* Further, we note the payroll deductions for federal withholding tax are protected by common-law privacy and must be withheld under section 552.101, but the payroll deductions for social security, mandatory retirement, and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See, e.g.,* ORDs 600 at 9-12 (participation in TexFlex), 545 at 3-5; *see also* Attorney General Opinion GA-0572 at 4 (2007) (public employee's net salary protected by common-law privacy, but gross salary is not). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the county has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the county may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.131 of the Government Code relates to economic development information and provides, in relevant part:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(b). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* Section 552.131(b) protects the interests of governmental bodies. You assert a portion of the submitted information, which you have marked as Exhibit C, relates to confidential economic development negotiations that have not resulted in a final agreement with the business prospect. Upon review, we find some of the information at issue is protected by section 552.131(b). Accordingly, the county may withhold the information we marked under section 552.131(b) of the Government Code. However, upon review, we find you have not demonstrated any portion of the remaining information reveals financial or other incentives that are being offered to a business prospect by the county. Thus, we conclude the county may not withhold any portion of the remaining information under section 552.131(b) of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding 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 must withhold the submitted partial bank account numbers under section 552.136 of the Government Code.

In summary, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county may withhold the information we marked under section 552.131(b) of the Government Code. The county must withhold the submitted partial bank account numbers under section 552.136 of the Government Code. The remaining information must be released.

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,

Colin Henry  
Attorney  
Open Records Division

CEH/eb

Ref: ID# 948755

Enc. Submitted documents

c: Requestor  
(w/o enclosures)