



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2022

Mr. Matthew Entsminger
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2022-25591

Dear Mr. Entsminger:

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# 967986 (ORR 1054167-1).

The Travis County Purchasing Office (the "county") received a request for information pertaining to a specified contract. You state the county will release some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Smith Protective Services, Inc. ("Smith"). Accordingly, you state, and provide documentation showing, you notified Smith of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2022-19206 (2022) and 2020-16641 (2020). We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the submitted information is identical to the information previously requested and ruled upon, the county must continue to rely on Open Records Letter Nos. 2022-19206 and 2020-16641 as previous determinations and withhold or release the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and

circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Smith explaining why the submitted information should not be released. Therefore, we have no basis to conclude Smith has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest Smith may have in the information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ *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* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between an individual and a governmental body protected under common-law privacy). Upon review, we find a portion of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, of the Texas military forces, as that term is defined by Section 437.001[.]" *Id.* § 552.1175(a)(15). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular

¹ 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 Nos. 481 (1987), 480 (1987), 470 (1987).

telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Thus, the county must withhold the information we have marked under section 552.1175(a)(15) of the Government Code if it relates to individuals subject to that section who elect to restrict access to that information in accordance with section 552.1175(b) of the Government Code; however, any personal cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals are not subject to section 552.1175(a)(15) or did not elect to restrict access to the information in accordance with section 552.1175(b), then the county may not withhold this information under section 552.1175(a)(15).

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. *See* Gov't Code § 552.130. Accordingly, the county must withhold discernible license plates and the information we have marked under section 552.130 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the county must withhold insurance policy numbers under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, the county must continue to rely on Open Records Letter Nos. 2022-19206 and 2020-16641 as previous determinations and withhold or release the information at issue in accordance with those rulings. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the information we have marked under section 552.1175(a)(15) of the Government Code if it relates to individuals subject to that section who elect to restrict access to that information in accordance with section 552.1175(b) of the Government Code; however, any personal cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The county must withhold discernible license plates and the information we have marked under section 552.130 of the Government Code. The county must withhold insurance policy numbers under section 552.136 of the Government Code. The

county must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jm

Ref: ID# 967986

Enc. Submitted documents

c: Requestor
(w/o enclosures)