



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 21, 1998

Ms. Sandra C. Joseph
Open Records/Disclosure Officer
Comptroller of Public Accounts
111 East 17th Street, LBJ State Bldg.
Austin, Texas 78774-0100

OR98-2467

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118941.

The Comptroller of Public Accounts (the "comptroller") received an open records request for all records pertaining to three violations of a "bailment agreement" between the comptroller and the Texas Department of Criminal Justice ("TDCJ").¹ You explain:

The Comptroller's office processes the monthly payroll for the [TDCJ]. So that TDCJ employees will be able to receive their salary warrants in a timely fashion, the Comptroller's office prints the warrants and delivers them to the TDCJ prior to the first business day of each month. The Comptroller's office and the TDCJ entered into a bailment contract that requires TDCJ to refrain from distributing the salary warrants prior to the first business day of each month. In three instances, individual TDCJ employees gained access to their salary warrants and cashed them prior to the first business day of the month.

The only information you seek to withhold in response to the open records request is certain information contained on the salary warrants, which you seek to withhold pursuant to sections 552.101 and 552.117(3) of the Government Code.

¹Two of these violations occurred at approximately the same time.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

You first contend that, although the gross salary of public employees is generally deemed to be public information, *see* Gov’t Code § 552.022(2), because the salary warrants reflect the net salary of public employees, the amount of the warrant reveals the fact that the employees have made certain “voluntary personal financial decisions” that are protected from public disclosure under common-law privacy. You state that these personal decisions could include whether to contribute to the state’s 401(k) program, how much insurance the employee has purchased, the amount of federal tax withholding the employee has selected, and whether the employee has chosen automatic payroll deduction to pay union dues.

While we generally agree that information revealing whether a public employee has made such financial decisions is protected by common-law privacy, *see, e.g.*, Open Records Decision Nos. 600 (1992), 545 (1990), the warrants at issue do not reflect such information on their face. The warrants merely reflect the employees’ net salary. Thus, although a member of the public could conclude that deductions have been made from the employees’ salaries, the nature of those deductions would not be revealed by the release of these warrants. Information is not protected from disclosure under the Open Records Act simply because it might *indirectly* lead to disclosure of confidential information. *See, e.g.*, Open Records Decision No. 408 (1984). We therefore conclude that the comptroller must release the net salary information contained in the salary warrants.

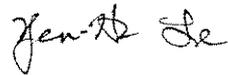
You also contend that the federal reserve numbers contained in the warrants reflect a personal financial decision protected by common-law privacy. We disagree. Although such information does pertain to an individual’s “personal financial decision,” this type of information is not so “highly intimate or embarrassing” as to invoke the protection of common-law privacy. This information therefore must be released. We agree, however, that the employees’ bank account numbers must be withheld on privacy grounds.

Finally, we address your section 552.117 claims. Section 552.117(3) of the Government Code makes confidential, among other things, the home address and social security number of TDCJ employees. The cash warrants at issue reveal the employees’ social security numbers, which must be withheld under section 552.117(3). The warrants also reveal the cities in which the respective employees reside and the employees’ zip codes. Because this information constitutes part of the employees’ home addresses, we conclude

that the city of residence and zip code information must be withheld pursuant to section 552.117(3).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 118941

Enclosures: Submitted documents

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(w/o enclosures)