



June 6, 2001

Ms. Lala Garcia
Office Manager
El Paso County Water Control & Improvement District No. 4
P.O. Box 3880
Fabens, Texas 79838-3880

OR2001-2361

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148081.

The El Paso County Water Control & Improvement District No. 4 (the "district") received a request for copies of invoices paid by ten specific checks. You claim that the invoice for one of the checks is a payroll earnings report of an employee that is excepted from disclosure under section 552.101 of the Government Code. You have not raised any exceptions for the remaining requested information. Therefore, we assume that this information has been released to the requestor. If not, you must do so immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). As for the information you wish to withhold, we have considered your claimed exception and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy as encompassed by section 552.101 of the Government Code. See Open Records Decision Nos. 600 (1992), 545 (1990), 373

(1983). For example, a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. ORD 600 (TexFlex benefits), ORD 545 (deferred compensation plan). In addition, information relating to an employee's election of optional insurance coverages is protected by the common law right of privacy. ORD 600 at 9. On the other hand, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction for that plan is not information that is excepted from disclosure. *Id.* at 10-11. Also, salary information is made expressly public by section 552.022(a)(2) of the Government Code.

Here, it appears that most of the submitted information relates to financial transactions that have been funded wholly or in part by the district. Therefore, you may not withhold any of that information under common law privacy. However, information concerning the types of investments chosen by an employee, the account numbers for those investments, and the amount of money that an employee contributes to such investments is protected under common law privacy and must be withheld under section 552.101.

Next, we note that section 552.117 may protect the social security numbers that appear in the submitted records from disclosure. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the employee timely elected to keep his personal information confidential, the district must withhold the employee's social security number. The district may not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential.

If the employee did not elect to keep his personal information confidential, the social security number may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Here, we have no basis for concluding that any of the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution,

however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 148081

Encl. Submitted documents

cc: Mr. Morgan Laird
P.O. Box 422
Fabens, Texas 79838
(w/o enclosures)