



July 13, 2001

Mr. Bill Campbell  
County Attorney  
Concho County  
P.O. Box 236  
Paint Rock, Texas 76866-0236

OR2001-3025

Dear Mr. Campbell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149417.

Concho County (the "county") received a request for eight categories of information concerning the county's participation in the West Texas Rural Counties Association ("WTRCA"), an insurance pool. Specifically, the requestor seeks:

- (1) Copies of all financial statements and related documents in the possession of the [county] Government covering the period from January 1, 1999 to the present. This request includes, but is not limited to, documents addressing your entity's: (a) revenues and expenditures; (b) assets and debts; (c) budget information; and (d) fiscal statements (audited and unaudited);
- (2) Copies of all contracts, agreements and understandings between [the county] Government and the [WTRCA];
- (3) Copies of all documents and communications, written and electronic, between the [county] Government and the [WTRCA] concerning the payment of the creditors of the [WTRCA] in the period of time between October 1, 1998 and the date of your response to this request;

(4) Copies of all communications and documents, written and electronic, in the possession of the [county] Government which refer to, mention or relate to the [WTRCA];

(5) Copies of all documents and communications, written and electronic, in the possession of the [county] Government which refer to, mention or relate to [Eckerd Health Services ("EHS")] in the period of time between April 1, 1996 to the date of your response to this request;

(6) Copies of the charter, charter amendments, by-laws, by-law amendments, minutes and resolutions of the [WTRCA];

(7) Copies of all reports, correspondence or communications between the members of [the WTRCA] and the [WTRCA], in the period of time between April 1, 1996 to the date of your response to this request; and

(8) Copies of the Interlocal Participation Agreement (Employee Benefit Pool) and all amendments thereto between the [WTRCA] and [the county].

You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. In addition, you claim some of the information is made confidential by the Internal Revenue Code and article 20A.25 of the Texas Insurance Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Pursuant to section 552.301(e), among other information, a governmental body is required to submit to this office no later than fifteen business days after receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). You did not, however, timely submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.<sup>2</sup>

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup> Moreover, it has long been established that the difficulty of complying with a public information request is not a relevant factor in determining whether the responsive information is excepted from required public disclosure. *See, e.g., Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Attorney General Opinion JM-672 (1987) (the difficulty or cost of complying with a public information request does not determine whether the information is available to the public).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Sections 552.103, 552.107(1), and 552.111 are discretionary exceptions and do not provide compelling reasons to overcome the presumption of openness. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Therefore, the requested information cannot be withheld under sections 552.103, 552.107(1), and 552.111 of the Government Code. We note, however, that some of the information at issue must be withheld from public disclosure pursuant to sections 552.101 and 552.117 of the Government Code.

In addition, the county failed to submit the W-2 and W-4 forms, which you claim are confidential under the Internal Revenue Code.<sup>3</sup> Because you have not submitted this information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Next, you assert that records concerning the diagnosis, treatment, or health of persons covered by the pool are confidential under article 20A.25 of the Insurance Code. Article 20A.25 in pertinent part states:

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or pursuant to a statute or court order for the production of evidence or to discovery therefore; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent.

Ins. Code art. 20A.25. After reviewing the submitted information, we conclude none of the submitted documents contain information made confidential under article 20A.25 of the Texas Insurance Code.

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<sup>3</sup> We note that in his letter dated May 10, 2001, the requestor states he will significantly narrow his request so as to not include any W-2 or W-4 forms or any records which concern the diagnosis, treatment or health of persons covered by the pool and applicants for coverage under the pool. Thus, if the requestor agrees that such information is not responsive to the request, the county need not release it.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also includes the doctrine of common law privacy. 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 the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to benefits must be disclosed if it reflects the employee's mandatory contributions to the benefits plan. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the county. *Id.* The county must withhold information concerning an employee's decision to obtain optional insurance coverages that is not wholly or partly paid for by the county. For example, the county must withhold the amounts of employees' contributions to any optional health plans.

Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the employees request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employees or former employees have elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the county's receipt of the present request, we believe that the county must withhold this information from required public disclosure pursuant to section 552.117. We have marked those portions of the submitted documents that must be withheld under section 552.117 if the employees or former employees timely made the election not to allow public access to the information.

Further, social security numbers may be withheld in some circumstances 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.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the 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 county pursuant to any provision of law enacted on or after October 1, 1990.

In summary, because the county failed to submit the W-2 and W-4 forms, the county must release this information to the requestor if it is responsive to the request. In addition, the county must withhold (1) information concerning an employee's decision to obtain optional insurance coverages that is not wholly or partly paid for by the county, and (2) section 552.117 information only if the employees timely made their section 552.024 elections. The remainder of the requested information must be released to the requestor.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DBF/seg

Ref.: ID# 149417

Encl. Marked documents

cc: Mr. Peter Franklin, III  
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