



May 14, 2002

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2002-2547

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162850.

The Harris County Juvenile Probation Office (the “county”) received a request for all information in the personnel files of a named former county employee, including records relating to compensation or reimbursement of expenses, and travel records. You claim that the requested information is excepted from disclosure under section 552.024, 552.101, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that portions of the information in Exhibit E must be withheld under section 552.101 of the Government Code in conjunction with the common-law right of privacy. The doctrine of 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) (Employee’s Withholding Allowance Certificate; 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), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Thus, information about the essential features of an employee's participation in a group insurance program funded in part by the state involves him in a transaction with the state and, therefore, is not excepted from disclosure by a right of privacy. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an optional benefits plan offered by the state. Open Records Decision No. 600 (1992). We believe that some of the submitted information constitutes personal financial information. Further, we believe there is no legitimate public interest in this information. Accordingly, we have marked the information in the submitted documents that must be withheld under section 552.101 in conjunction with common-law privacy.

We note that Exhibit B contains employee W-4 forms that must be withheld under section 552.101. Employee W-4 forms are excepted from disclosure under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). The county must therefore withhold the W-4 forms in Exhibit B under section 552.101.

We note that Exhibit F includes Employment Eligibility Verification, Forms I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of these document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Forms I-9 are confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests 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 county may only withhold information under section 552.117 on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the present request for this information was received.

You have submitted information indicating that the named employee timely elected to deny access to the information protected by section 552.117. The county must therefore withhold the information you have marked in Exhibits C, E, and F pertaining to the employee's home

address and telephone number, social security number, and any information that reveals whether the employee has family members. We have marked additional information that must be withheld under section 552.117.

Section 552.130 of the Government Code exempts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the county must withhold the driver's license numbers you have marked, as well as the complete copies of the named individual's driver's license and other information which we have marked in Exhibit F, pursuant to section 552.130.

Exhibit C contains account numbers that are subject to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

Gov't Code § 552.136. Accordingly, the county must withhold the account numbers that we have marked in Exhibit C pursuant to section 552.136 of the Government Code.

We further note that Exhibit E contains information that must be withheld under section 552.137 of the Government Code. Section 552.137 provides in relevant part:

(a) An e-mail address *of a member of the public* that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

Section 552.137 requires the county to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the members of the public have affirmatively consented to their release. As there is no indication that the member of the public whose e-mail address is at issue here has consented to release of the email address in question, the county must withhold from disclosure the e-mail address we have marked in Exhibit E pursuant to section 552.137 of the Government Code.

To summarize: (1) we have marked the personal financial information in Exhibit E that must be withheld under 552.101 and common-law privacy; (2) the county must withhold the W-4 forms in Exhibit B under section 552.101; (3) the county must withhold the Forms I-9 in Exhibit F under section 552.101; (4) the county must withhold the home address and telephone number, social security number, and family member information that you have marked, and the additional information we have marked, under section 552.117; (5) we have marked the account numbers in Exhibit C that must be withheld under section 552.136; (6) we have marked the e-mail address in Exhibit E that must be withheld under section 552.137; and (7) the county must withhold the driver's license numbers you have marked, as well as the complete copies of the named individual's driver's license and other information that we have marked in Exhibit F, pursuant to section 552.130. The remaining 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 162850

Enc. Submitted documents

c: Mr. C.J. Treadway
1122 Colorado, Suite 310
Austin, Texas 78701
(w/o enclosures)