



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 23, 2003

Mr. Scott Gibson  
Enforcement Attorney  
Texas Board of Architectural Examiners  
P.O. Box 12337  
Austin, Texas 78711-2337

OR2003-0490

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175447.

The Texas Board of Architectural Examiners (the "board") received a request for any information regarding complaints filed against a specified individual and/or company. You state that you have released a portion of the requested information to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute or law. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988)*. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You explain that the “informants provided information regarding the unlawful use of the title ‘architect’ in violation of Section 10(i) and 13(a) of article 249a.” Further, you state that a “violation of Section 13 is a misdemeanor, punishable by a fine.” Based upon your representations and our review of the submitted information, we conclude that the board may withhold the information you have highlighted in Exhibit B and the information you have marked in Exhibit C under section 552.101 in conjunction with the informer’s privilege because it is information that reveals the complainants’ identities.

In regard to the remaining information in Exhibit C, you assert section 301.081 of the Labor Code. Section 301.081 reads in part as follows:

- a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

Labor Code § 301.081. This office interpreted the predecessor provision of section 301.081(c) to apply to information the Texas Workforce Commission (the “commission”) obtained from the records and reports that employers are required to file with the commission pursuant to the predecessor provision of section 301.081. *See* Open Records Decision No. 599 (1992) (construing former V.T.C.S. art. 5221b-9). You state that the information in Exhibit C “includes an employee’s claim for unpaid wages and the response of the employee’s former employer opposing the claim” and that “the commission provided this information to the Board during an investigation conducted by the board.” However, you also state that the wage claim at issue was submitted to the commission pursuant to Chapter 61 of the Labor Code. Therefore, we are unable to conclude that these documents are employers’ records or reports that an employer is required to file with the commission pursuant to section 301.081. Thus, the remaining information in Exhibit C is not information protected from public disclosure pursuant to section 552.101 in conjunction with section 301.081 of the Labor Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Information is protected under the common-law right to privacy when (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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history), certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Having reviewed the information in Exhibit C, we have marked the information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. This information is protected by common-law privacy and must be withheld under section 552.101.

A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records 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* Open Records Decision No. 622 (1994).

You cite section 61.051 of the Labor Code to support your assertion that the submitted social security number was obtained or is maintained pursuant to a provision of law enacted on or after October 1, 1990. You state that the social security number at issue was recorded on a document submitted to the commission in response to a wage claim filed pursuant to section 61.051 of the Labor Code. However, nothing in this section requires or authorizes the commission to obtain or maintain the social security number of an employee filing a wage claim. Therefore, it appears that the social security number at issue was obtained or maintained by the commission solely under a policy or practice to identify the individual. The commission's policy or practice does not constitute a law enacted on or after October 1, 1990 authorizing it to obtain or maintain a social security number. Having reviewed your argument, we conclude that the provision of law that you cite does not authorize the commission to obtain or maintain a social security number. Because you have not cited and we are not aware of any provision of law enacted on or after October 1, 1990, that authorizes

the board to obtain the social security number at issue, we have no basis for concluding that the number is made confidential by the 1990 amendments to the Social Security Act and therefore excepted from disclosure pursuant to section 552.101. We caution the board, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the board should ensure that this number was not obtained or is not maintained by the board pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude that: 1) you may withhold the information you have highlighted in Exhibit B and the information you have marked in Exhibit C under section 552.101 in conjunction with the informer's privilege; 2) you must withhold the information we have marked in Exhibit C under section 552.101 in conjunction with common-law privacy; and 3) the social security number may be excepted from disclosure under section 552.101 in conjunction with federal law. All remaining information must be released.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 175447

Enc: Submitted documents

c: Ms. Phyllis L. Palis  
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(w/o enclosures)