



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2005

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2005-03506

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222638.

The Texas Department of Transportation (the "department") received a request for all 1099 Form to a specific individual prepared for or by the department as well as the schedules and work papers used. You claim that the submitted 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989). After reviewing your arguments and the submitted information, we find that the submitted information is not tax return information as defined by section 6103 of title 26. See 26 U.S.C. § 6103(b)(2). Therefore, you may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Next, you claim that the submitted information is protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release

would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also ruled that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. Cf. Gov't Code § 552.022(a)(2) (stating that salary of employees of governmental body are expressly made public). In this instance, however, the individual whose information is at issue was "hired to perform work for lawsuits involving" the department. Thus, the submitted information is related to financial transactions between this individual and the department. Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. Since you have not claimed any other exceptions to disclosure, the submitted 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).

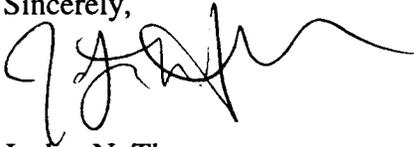
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read 'J. Thompson', with a long, sweeping horizontal line extending to the right.

Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 222638

Enc. Submitted documents

c: Mr. Charles Edwards DeBose  
James Pennington, P.C.  
8333 Douglas Avenue, Ste. 975  
Dallas, Texas 75225  
(w/o enclosures)