



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2007

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2007-01522

Dear Ms. Camp-Lee:

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# 271033.

The Round Rock Police Department (the "department"), which you represent, received a request for a list of information relating to a named police officer. You inform us that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Federal tax return information is confidential under section 6103(a) of title 26 of the United States Code. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2). The department must withhold the W-4 forms that we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. *See* Open Records Decision No. 600 at 8-9 (1992).

You raise section 552.101 in conjunction with common-law privacy. The common-law right to privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate

public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12* (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Having reviewed the submitted documents, we have marked personal financial information that the department must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the submitted information relates to a peace officer. You seek to withhold the information that you have highlighted in yellow under section 552.117(a)(2). Having reviewed that information, we have marked information that the department may not withhold under section 552.117(a)(2). We note that a post office box number is not a "home address" for purposes of section 552.117.¹ Otherwise, we agree that the department must withhold the rest of the yellow-highlighted information under section 552.117(a)(2). We have marked additional information that must also be withheld under this exception.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See Gov't Code § 552.130(a)(1)*. We agree that the department must withhold the Texas driver's license number that you have highlighted in green under section 552.130.

¹ *See Gov't Code § 552.117*; *Open Records Decision No. 622 at 4* (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

We note that section 552.136 of the Government Code is applicable to some of the submitted information.² Section 552.136 provides as follows:

(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; or
- (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. We have marked an insurance policy number that the department must withhold under section 552.136.

Lastly, we address your claim under section 552.137 of the Government Code. Section 552.137(a) states that “[e]xcept as otherwise provided by this section, 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.” Gov’t Code § 552.137(a). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the owner of the e-mail address has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. In this instance, the e-mail address that you seek to withhold is maintained by a governmental entity. Therefore, the department may not withhold the e-mail address in question under section 552.137.

In summary: (1) the department must withhold the marked W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (2) the marked personal financial information that is protected by common-law

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

privacy must also be withheld under section 552.101; (3) except for the information that we have marked for release, the department must withhold the yellow-highlighted information and the information that we have marked under section 552.117(a)(2) of the Government Code; (4) the green-highlighted Texas driver's license number must be withheld under section 552.130 of the Government Code; and (5) the marked insurance policy number must be withheld under section 552.136 of the Government Code. The rest of 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).

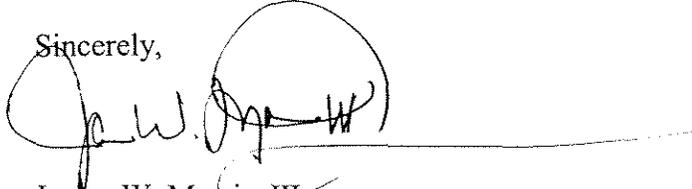
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Texas 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", written over a horizontal line. The signature is stylized and includes a large circular flourish at the beginning.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jww

Ref: ID# 271033

Enc: Submitted documents

c: Mr. David Fernandez, Jr.
Attorney at Law
P.O. Box 5120
Temple, Texas 76505-5120
(w/o enclosures)