



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2007

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2007-02694

Dear Ms. Kaiser:

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# 273080.

The Texas Workforce Commission (the "commission") received a request for "[a]ny claims related to violation of state laws regarding minimum wage, or overtime against [three named corporations]." You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received correspondence from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the Texas Comptroller of Public Accounts currently has a lawsuit pending against the Office of the Attorney General that pertains, in part, to individuals' dates of birth: *Tex. Comptroller of Public Accounts v. Abbott*, No. D-1-GN-001120 (126th Dist. Ct., Travis County, Tex.). Accordingly, we do not address your arguments with regard to the birth dates that the commission seeks to withhold. We will allow the trial court to determine whether that type of information must be released to the public.

Next, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code for requesting a decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision

No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.147 of the Government Code can each provide a compelling reason to overcome the presumption of openness, we will address the submitted arguments against disclosure of the requested 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 the doctrine of common-law privacy. Common-law privacy protects information if (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, 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. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history). We have marked the submitted information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the commission must withhold the social security numbers of private citizens we have marked under section 552.147 of the Government Code.¹

In summary, we have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.147 of the Government Code. The remaining 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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jb

Ref: ID# 273080

Enc. Submitted documents

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