



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2008

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

OR2008-02090

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# 302083.

The Texas Workforce Commission (the "commission") received a request for information related to investigations of a specified company. You state that the commission will provide the requestor with a portion of the requested records. You state that you are withholding unemployment compensation information pursuant to section 301.085(c) of the Labor Code. See Labor Code § 301.085 (stating unemployment compensation information is not public information subject to the Act). You also state that the commission will redact social security numbers pursuant to section 552.147 of the Government Code.¹ 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. Section 552.101 encompasses information made confidential by 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). This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there

¹Section 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. We note, however, that section 552.147 does not except tax identification numbers.

is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 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 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). We also note that the payroll deductions for federal withholding tax are protected by common-law privacy and must be withheld under section 552.101. However, the payroll deductions for social security and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See* Open Records Decision Nos. 600 at 9-12, 545 at 4, 523 at 4. The commission asserts that the marked information pertaining to individuals' wages, deductions, and rent paid by individuals are confidential under common-law privacy. Upon review, we agree that a portion of the information you have marked, and some additional information that we have marked, is confidential under section 552.101 in conjunction with common-law privacy. However, you have failed to establish that the employee numbers, commission tax account numbers, federal tax numbers, and social security and Medicare deductions, which we have marked for release, constitute intimate or embarrassing information for the purposes of common-law privacy. Thus, with the exception of the information we have marked for release, the commission must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information contains a bank account and routing number. Section 552.136 states that "[n]otwithstanding 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(b). The commission must withhold the bank account and routing number we have marked under section 552.136 of the Government Code.²

In summary, with the exception of the information we have marked for release, you must withhold the information marked under section 552.101 in conjunction with common-law privacy. You must withhold the information we have marked under section 552.136 of the Government Code. 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

²The Office of the Attorney General will raise a mandatory exception, such as section 552.136, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

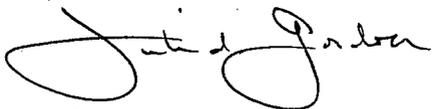
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 302083

Enc. Submitted documents

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(w/o enclosures)