



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2008

Mr. David M. Swope  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2008-08083

Dear Mr. Swope:

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# 312734.

The Harris County Tax Assessor/Collector (the "assessor") received a request for (1) all complaints regarding a named former employee, (2) all documents reflecting threats made by the named former employee, (3) all statements regarding any physical altercations between the named former employee and another named former employee, and (4) the personnel files of both named former employees. You state you have provided the requestor with some of the requested information. You claim that portions of the submitted personnel records are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted personnel records contain tax return 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 information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a

taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . , or offense[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), aff’d in part, 993 F.2d 1111 (4th Cir. 1993). The assessor must withhold the W-4 forms we have marked pursuant to federal law.<sup>1</sup>

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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) (finding personal financial information to include 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review of the remaining personnel records, we find the optional insurance coverage, beneficiary designation, direct deposit, and deferred compensation information constitutes personal financial information. We also find that this information is not of legitimate public concern. Thus, the assessor must withhold the information you have marked, in addition to the information we have marked, in the personnel records under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government

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<sup>1</sup> As our ruling for this information is dispositive, we need not address your arguments against disclosure.

<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments for a portion of this information.

Code. Gov't Code § 552.117(a)(1); *see* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). We note that a post office box number is not a "home address" for purposes of section 552.117. *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). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that both of the employees whose information is at issue elected to keep their personal information confidential. You have marked information in the remaining personnel records that you claim is subject to section 552.117. We agree that the home telephone numbers, personal cellular telephone numbers, social security numbers, family member information, and most of the home address information you have marked is the type of information protected by section 552.117. We note, however, that you have marked post office box address information, which, as previously stated, is not protected under section 552.117. *See* Gov't Code § 552.117; ORD No. 622 at 4. Furthermore, you have not explained how the remaining information that you marked under section 552.117 is part of a home address. Consequently, this information may not be withheld under section 552.117, and we have marked it for release. Therefore, with the exception of the information we have marked for release, the assessor must withhold the information you have marked under section 552.117 of the Government Code.<sup>3</sup> The assessor must also withhold the additional information we have marked under section 552.117 of the Government Code.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The assessor must withhold the Texas motor vehicle record information you have marked in the remaining personnel records under section 552.130 of the Government Code.

In summary, the assessor must withhold the W-4 forms we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The assessor must withhold the personal financial information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked for release, the assessor must withhold the information you have marked under section 552.117 of the Government Code. The assessor must also withhold the additional

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<sup>3</sup> As our ruling for this information is dispositive, we need not address your remaining argument against disclosure.

information we have marked under section 552.117 of the Government Code. Finally, the assessor must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The 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 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).

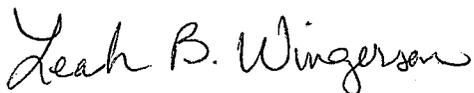
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 312734

Enc. Submitted documents

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(w/o enclosures)