



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2008

Mr. Joseph J. Gorfida Jr.  
Nichols, Jackson, Dillard, Hagar & Smith LLP  
1800 Lincoln Plaza  
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Dallas, Texas 75201

OR2008-14230

Dear Mr. Gorfida:

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# 324812.

The City of Allen (the "city"), which you represent, received a request for information pertaining to the city's Home Repair Program. You state that you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions 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 information that other statutes make confidential. 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 Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 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).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer's designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). Section 6103(c) provides that, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. *See* 26 U.S.C. § 6103(c). The submitted information contains the requestor's tax record information; therefore, pursuant to section 6103(c) of title 26 of the United States Code, the city must release these forms to the requestor if the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the city must withhold all of the tax return information we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.<sup>1</sup>

Section 552.101 also 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.

This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and information concerning the intimate relations between individuals and their family members, *see* ORD 470. However, this office has

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

found that, absent special circumstances, the names, addresses, and marital status of members of the public are not excepted from required public disclosure under common-law privacy. *See* ORD 455.

In Open Records Decision No. 373 (1983), this office determined that financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was "information deemed confidential" by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Additionally, in Open Records Decision No. 523 (1989), we held that the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Similarly, we thus conclude that financial information relating to an applicant for housing assistance satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The second requirement of the common-law privacy test requires that the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe that ordinarily this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his or her financial status. *See* Open Records Decision No. 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. Open Records Decision Nos. 523, 373 at 4.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 523, 385. Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600 (1992) (personal financial information not relating to the financial transaction between an individual and a governmental body is protected), 545 (1990) (employee's participation in deferred compensation plan private), 523 (1989), 481 (1987) (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are

public); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights); *but see* Open Records Decision Nos. 602 at 5 (records related to salaries of those employees for whom the city pays a portion are subject to the Act). Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.<sup>2</sup> However, you have failed to demonstrate how the remaining information at issue constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The city must withhold the information we have marked under section 552.130 of the Government Code.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) provides 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.” The city must withhold the information we have marked under section 552.136. However, you have not explained how the remaining numbers that you have marked under section 552.136 consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* § 552.136(a), 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, you have failed to demonstrate the applicability of section 552.136 to the remaining numbers, and they may not be withheld on that ground.

Section 552.137 provides that “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 [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(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). We note that section 552.137(a) does not apply to the e-mail address provided by a person who has a contractual relationship with the governmental body or by the contractor’s agent. *Id.* § 552.137(c)(1). 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. Therefore, the city must withhold any personal e-mail addresses under section 552.137, unless the owner of a

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particular e-mail address has affirmatively consented to its public disclosure. However, to the extent that any of the personal e-mail addresses belong to employees of entities with which the city has contractual relationships, or fall under any of the other exceptions listed under subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137.

Finally, you assert that the remaining submitted information contains social security numbers. Section 552.147(a) states that the social security number of a living person is excepted from required public disclosure. *See id.* § 552.147(a). Section 552.147(b) 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. *See id.* § 552.147(b). The city may withhold the social security numbers of living persons under section 552.147 of the Government Code.

In summary, the city must release the requestor's marked tax record information to him pursuant to section 6103(c) of title 26 of the United States Code, if the Secretary of Treasury determines that disclosure would not seriously impair federal tax administration; otherwise, these forms, along with the tax return information we have marked, are confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. To the extent that the e-mail addresses contained in the submitted information are not excluded by subsection (c), they must be withheld under section 552.137 of the Government Code, unless the city receives consent for their release. The city may withhold social security numbers pursuant to section 552.147 of the Government Code. The remaining information must be released.<sup>3</sup>

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

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<sup>3</sup>We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor or his authorized representative, the city should again seek our decision.

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). If the governmental body does not file suit over 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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 324812

Enc. Submitted documents

c: Mr. Thomas F. Buchanan  
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(w/o enclosures)