



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2009-07431

Dear Mr. Phillips:

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# 344563 (FW PIR No. 2470-09).

The City of Fort Worth (the "city") received a request for employment information for a named individual. You state you have redacted Texas motor vehicle record information pursuant to previous determinations issued to the city under section 552.130 of the Government Code in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). You also state that you have redacted social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 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. Section 552.101 encompasses information protected by other statutes, such as section 1324a of title 8 of the United States Code. This section provides that an Employment Eligibility Verification I-9 Form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime

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.

and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this instance we note the requestor is an investigator with the United States Postal Service Office of Inspector General and states that she is conducting a fraud investigation. Accordingly, we find that the submitted I-9 form, and its attachment, is generally confidential under section 1324a of title 8 of the United States Code. However, to the extent release of the submitted I-9 form, and its attachment, is in compliance with the federal laws and regulations governing the employment verification system, then these documents must be released to the requestor.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. This office has 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), 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." *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). Consequently, the city must withhold the submitted W-4 form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security 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. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for information was received. In this case, you inform us, and provide documentation showing, that the employee whose information is at issue timely elected confidentiality for the information you have marked under section 552.024. Thus, the city must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

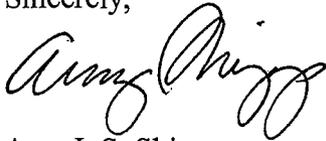
In summary, the submitted I-9 form, and its attachment, is confidential under section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code, unless release of these documents to the requestor is in compliance with the federal laws and regulations governing the employment verification system. The city must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must

withhold the marked employee information under section 552.117(a)(1) of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 344563

Enc. Submitted documents

cc: Requestor
(w/o enclosures)