



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2009

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2009-09790

Dear Ms. Soucy:

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# 349142 (Comptroller ID# 5714405184).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for five specified categories of information from the "Uniform Statewide Payroll System, Report 879 ORP Employee Retirement Contribution Report." You claim that the requested 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. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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. *Id.* at 683. This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy).

You explain that the requested information reveals which individual government employees have selected optional investment programs under Chapter 830 of the Government Code and information about the specific programs selected by each employee. Upon review, we find that the names of the individual employees, which we have marked, reveals personal financial information which is highly intimate or embarrassing and not of legitimate public concern. Therefore, the comptroller must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The comptroller has failed to demonstrate, however, how the remaining information, consisting of the employing agency's name, employing agency's code, organization code, organization name, vendor number, and vendor name, is highly intimate or embarrassing and not of legitimate public interest. Therefore, the comptroller may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy. The remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 349142

Enc. Submitted documents

c: Requestor
(w/o enclosures)