



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 31, 2009

Mr. Jason King
Akers & Boulware-Wells, L.L.P.
Attorney for City of Schulenburg
816 Congress Avenue, Suite 1725
Austin, Texas 78701

OR2009-10648

Dear Mr. King:

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# 350885.

The City of Schulenburg (the "city"), which you represent, received a request for the city's 2008 "W-2 income report" and the following information for each city employee: (1) name; (2) years of service; (3) 2008 gross pay; and (4) 2008 hourly wage. You state that the city has released or will release all of the requested information except the W-2 income report. 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 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 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). Although you raise section 6103(a), you do not explain how the

submitted payroll information constitutes "return information" as defined in section 6103(b). Accordingly, we find you have failed to establish that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

We note that section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has previously determined that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and not of legitimate public concern. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Upon review, we find that the information we have marked reflects personal financial elections and is therefore highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions, the city must release the remainder of the submitted information.¹

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

¹However, we note that a governmental body may redact a living person's social security number without the necessity of requesting a ruling from this office. *See Gov't Code § 552.147(b)*.

Ref: ID# 350885

Enc. Submitted documents

cc: Requestor
(w/o enclosures)