



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2010

Mr. Robert J. Perez
Shelton & Valadez, P.C.
For City of Hondo
600 Navarro, Suite 500
San Antonio, Texas 78205

OR2010-06947

Dear Mr. Perez:

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# 379406.

The City of Hondo (the "city"), which you represent, received a request for the employee files of two named city police officers. You state you have released some information to the requestor. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state a portion of the requested information was the subject of a previous ruling issued by this office, Open Records Letter No. 2009-10417 (2009). In that ruling, this office concluded that the city must withhold portions of the employee file of one of the named city police officers under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code but that the remaining employment records must be released. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, you must continue to rely on this prior ruling as a previous determination and withhold or release the information requested in this instance that was previously ruled upon in that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect to the information that was

not previously ruled upon in Open Records Letter No. 2009-10417, we will address your arguments against disclosure of this 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. The submitted documents include a W-4 form. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code. This office has held that 26 U.S.C. 6103(a) 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." 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 552.101 also encompasses information protected by common-law privacy. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the city's section 552.102 claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. *See id.* at 683. 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 (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, we find the information we have marked pertains to personal financial decisions not relating to a financial transaction between an individual and a governmental body. Thus, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information pertains to personal financial decisions not relating to a financial transaction between an individual and a governmental body. Accordingly, none of the remaining information is confidential under the doctrine of common-law privacy, and it may not be withheld under either section 552.101 or section 552.102 of the Government Code on that basis.

Section 552.117(a)(2) exempts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, the officer at issue is no longer employed by the city, and it is unclear whether this person is currently a licensed peace officer as defined by article 2.12. Accordingly, if the former city police officer is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

If the former employee is no longer a licensed peace officer, then the personal information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) exempts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the former city police officer timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1).¹

¹We note that even if the employee did not make a timely election under section 552.024, section 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. Gov't Code § 552.147.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). The city must withhold the Texas driver's license information that we have marked under section 552.130.

We note the remaining information contains insurance group numbers. Section 552.136 of the Government Code provides "[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."² *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find the city must withhold the insurance group numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the 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 information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the former employee is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. If the former employee is no longer a licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the former employee timely requested confidentiality under section 552.024 of the Government Code. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³ The city must withhold the insurance group numbers we have marked under section 552.136 of the Government Code. 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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and a Texas driver's license number and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 379406

Enc. Submitted documents

c: Requestor
(w/o enclosures)