



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2011-06274

Dear Ms. Quinn:

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# 416660 (Reference No. 11-328).

The City of Cedar Park (the "city") received a request for a named individual's personnel records. You claim portions of the submitted personnel records are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 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 protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders tax return information confidential. *See, e.g.,* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) of title 26 of the United States Code 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). The W-4 forms submitted as Exhibit E constitute tax return information. Therefore, the city must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code. Section 825.500 of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Section 825.500(g) states

[r]ecords and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the [Americans with Disabilities Act (the "ADA")], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). You assert, and we agree, the Application for Family and Medical Leave and Notice of Intention to Return from Family or Medical Leave forms submitted as Exhibit F are confidential under section 825.500 of title 29 of the Code of Federal Regulations. You state none of the release provisions of the FMLA apply to this information. Thus, we conclude the city must withhold Exhibit F in its entirety under section 552.101 of the Government Code in conjunction with the FMLA.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the

federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). You claim the information submitted as Exhibit G constitutes CHRI. Upon review, we find the information we have marked consists of CHRI that is confidential under chapter 411. Accordingly, the information we have marked in Exhibit G must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The remaining information in Exhibit G consists of driving record information. Consequently, we find you have not demonstrated how any of the remaining information in Exhibit G constitutes CHRI for purposes of chapter 411, and no portion of this information may be withheld on this basis.

We note the remaining information in Exhibit G and portions of Exhibit C include information that is excepted from disclosure under section 552.102(a) of the Government Code.¹ Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). The city must withhold the named individual’s date of birth we have marked in Exhibits C and G under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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 this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be

¹The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) 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 this information was made.

You have marked the named individual's social security number in Exhibit B and home addresses and home telephone numbers in Exhibit C. We have marked the named individual's home address in Exhibit G and additional personal information in Exhibit C. You have provided documentation showing the individual timely chose to not allow public access to her social security number and other personal information. Therefore, the city must withhold the individual's marked social security number and other personal information in Exhibits B, C, and G under section 552.117(a)(1) of the Government Code.² We note, however, you have also marked the individual's work telephone number in Exhibit C to be withheld under section 552.117. Because a work telephone number does not constitute the home telephone number, home address, social security number, or family member information of a city official or employee, the work telephone number, which we have marked for release, may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). You have marked the named individual's Texas driver's license number in Exhibit C, and we have marked the individual's additional Texas driver's license information in Exhibit G. The city must withhold the marked information in Exhibits C and G under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). You have marked the named individual's personal e-mail address in Exhibit C. The marked e-mail address is not specifically excluded by section 552.137(c). As such, the city must withhold the marked e-mail address in Exhibit C under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.

You claim portions of the remaining information are protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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

²As our ruling for this information is dispositive, we need not address your argument for a portion of this information.

S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 600 (1992) (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). The information submitted as Exhibit D consists of the named individual's direct deposit authorization form, which we find is not of legitimate public concern. Therefore, the city must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

You also seek to withhold a portion of the remaining information in Exhibit C under common-law privacy. The information you have marked consists of a reference to a suspect drinking alcohol and taking prescription medications and sleeping pills prior to his alleged criminal act. The submitted information reflects the information you have marked was given to responding police officers during the course of their investigation of the suspect's alleged criminal behavior. We find you have failed to demonstrate the applicability of common-law privacy to this information. Consequently, the city may not withhold the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. As you have claimed no other exceptions to disclosure, the city must release this information.

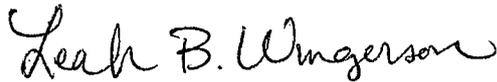
In summary, the city must withhold under section 552.101 of the Government Code Exhibit E in its entirety in conjunction with section 6103(a) of title 26 of the United States Code; Exhibit F in its entirety in conjunction with the FMLA; the information we have marked in Exhibit G in conjunction with federal law and chapter 411 of the Government Code; and Exhibit D in its entirety in conjunction with common-law privacy. The city must withhold the date of birth we have marked in Exhibits C and G under section 552.102(a) of the Government Code. Except for the work telephone number marked for release, the city must withhold the marked social security number and other personal information in Exhibits B, C, and G under section 552.117(a)(1) of the Government Code. The city must withhold the marked Texas driver's license information in Exhibits C and G under section 552.130 of the Government Code. The city must withhold the marked e-mail address in Exhibit C under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.³ The city must release the remaining information.

³As you acknowledge, Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; 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; Texas driver's license numbers under section 552.130 of the Government Code; and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eeg

Ref: ID# 416660

Enc. Submitted documents

c: Requestor
(w/o enclosures)