



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2013

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2013-00154

Dear Ms. Kaiser:

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# 476121 (TWC Tracking No. 121022-037).

The Texas Workforce Commission (the "commission") received a request for information pertaining to a named company. You state the commission will withhold some of the requested information pursuant to section 301.085(c) of the Labor Code and social security numbers pursuant to section 552.147 of the Government Code.¹ You state the commission will provide some of the requested information to the requestor but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Section 301.085(c) of the Labor Code provides unemployment compensation information and job matching services information are not public information for purposes of the Act. Labor Code § 301.085(c). 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.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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, 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 S.W.2d 668, 685 (Tex. 1976). This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual’s mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). You assert the information pertaining to individuals’ wages is confidential under common-law privacy. Upon review, we agree the wage information we have marked is confidential under common-law privacy, and the commission must withhold it under section 552.101 of the Government Code on that ground.

You also claim the home addresses, telephone numbers, and family information of claimants in the remaining information at issue are confidential under section 552.101 in conjunction with common-law privacy. We note, however, the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude the commission may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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.” Gov’t Code § 552.102(a). The Texas Supreme Court 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.*, 354 S.W.3d 336 (Tex. 2010). You have failed to demonstrate, however, how any of the remaining information you seek to withhold constitutes a commission employee’s date of birth. Consequently, the commission may not withhold any of the remaining information at issue under section 552.102(a) of the Government Code.

Section 552.136 of the Government Code provides in part the following:

(a) In this section, “access device” means 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:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Gov’t Code § 552.136(a)-(b). We have marked bank account and bank routing numbers the commission must withhold under section 552.136 of the Government Code.³ However, you have not explained how any of the remaining information you have marked consists of an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, you have failed to demonstrate the applicability of section 552.136 to the remaining information and the commission may not withhold it from release on that ground.

You assert some of the remaining information is excepted under section 552.137 of the Government Code, which 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). The submitted information does not contain any e-mail addresses. Therefore, the commission may not withhold from release any of the submitted information under section 552.137.

³You inform us the commission will redact bank account numbers in accordance with section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specified categories of information, including access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov’t Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

To conclude, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.136 of the Government Code. The commission must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 476121

Enc. Submitted documents

c: Requestor
(w/o enclosures)