ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2013

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2013-03329

Dear Ms. Hojem:

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# 480040 (MTA No. 2013-0045).

The Metropolitan Transit Authority of Harris County, Texas ("METRO") received a request for documents related to specified check numbers paid by METRO. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.147 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." Section 552.101 encompasses section 57.11(d) of the Education Code, which provides that "[s]tudent loan borrower information collected, assembled, or maintained by the [Texas Guaranteed Student Loan Corporation ("TGSLC")] is confidential and is not subject to disclosure under Chapter 552, Government Code." Educ. Code § 57.11(d). METRO argues that certain student loan garnishment information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 57.11(d) of the Education Code.[1] METRO explains that once TGSLC has determined a defaulted borrower

[1]This office has determined that information concerning student loans guaranteed by the TGSLC is not private. *See* Open Records Decision No. 480 (1987).

is eligible for wage withholding and employment is verified, a wage withholding order is issued to the borrower's employer. The order requires the employer to deduct portions of the employee's wages and forward them to the TGSLC. METRO states that records relating to garnishment of a METRO employee's salary pursuant to a wage withholding order is TGSLC's borrower information and is confidential under section 57.11 of the Education Code. This office has recognized that confidential information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Open Records Decision No. 674 at 4 (2001) (citing thirty years of authority for intergovernmental transfer doctrine). The intergovernmental transfer of the student loan borrower information does not affect the confidential status of the transferred information. *See id.* Consequently, METRO must withhold the information we have marked, concerning deductions required by a TGSLC wage withholding order, under section 552.101 of the Government Code in conjunction with section 57.11(d) of the Education Code.[2] However, the remaining information does not consist of student loan borrower information collected, assembled, or maintained by the TGSLC and, thus, may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. 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. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care). The remaining information pertains to student loan payments. In Open Records Decision No. 480, this office considered whether or not information regarding individuals who defaulted on student loans was purely personal financial information protected under a right of privacy. *See* ORD 480. In that decision, we determined that because the student loans at issue were backed by public funds, the public had a legitimate interest in information pertaining to the default of the loans, given the fact that public funds were directly involved. *Id.* at 4. We concluded that a right of privacy did not protect the

[2]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

student loan information, as the public nature of the transactions required the conclusion that whatever privacy interests were implicated by the information were outweighed by the public's right to be apprised of the manner in which its funds were being handled. *Id.* at 5. Therefore, METRO may not withhold any portion of the remaining information pertaining to the garnishment of wages for student loan defaults. However, the deductions pertaining to voluntary student loan payments, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy.[3]

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, 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). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only 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. You provide documentation showing the individual whose information is at issue elected to make his personal information confidential. Accordingly, METRO must withhold the information we have marked under section 552.117(a)(1) of the Government Code.[4] None of the remaining information is covered by section 552.117, and METRO may not withhold it on that basis.

In summary, METRO must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 57.11(d) of the Education Code and common-law privacy. METRO must also withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released to the requestor.

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

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[4]As our ruling is dispositive, we do not address your assertion of section 552.147 of the Government Code.

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,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 480040

Enc. Submitted documents

c: Requestor
(w/o enclosures)