



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2014

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

OR2014-05680

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# 518877 (TWC Tracking No. 131211-026).

The Texas Workforce Commission (the "commission") received a request for information regarding wage claims filed against a named business during a specified time period. You state you have released some information to the requestor. You state the commission will withhold certain information pursuant to section 301.085(c) of the Labor Code, section 552.147(b) of the Government Code, and Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under

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. See Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

sections 552.101 and 552.102 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

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 171.206 of the Tax Code, which provides the following:

Except as provided by Section 171.207, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the [Texas Comptroller of Public Accounts (the "comptroller")]; or
- (2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

Tax Code § 171.206. This provision protects information that is in the possession of the comptroller. In this instance, the submitted information is in the possession of the commission. You argue the interagency transfer doctrine provides the commission may not release information received from the comptroller that is confidential pursuant to section 171.206. This office has repeatedly held the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. The interagency transfer doctrine is based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision. No. 516 (1989).

²We note, and you acknowledge, the commission did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of those sections to the submitted information. *See id.* §§ 552.007, .302, .352.

³We 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.

However, in this instance, the comptroller has not established the information at issue is confidential pursuant to section 171.206. Furthermore, you provide no arguments explaining how the information at issue is subject to section 171.206. Consequently, we find the commission may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 171.206 of the Tax Code.

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 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 personal financial information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*, and the commission must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. However, 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) 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). 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). Upon review, we find you have failed to demonstrate section 552.102 is applicable to any of the remaining information you seek to withhold. Accordingly, no portion of the remaining information at issue may be withheld under section 552.102(a) of the Government Code.

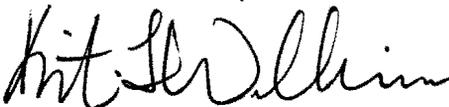
We note the remaining information contains information subject to section 552.136 of the Government Code, which provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁴ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the commission must withhold the information we have marked under section 552.136 of the Government Code.⁵

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

⁴The 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).

⁵We note section 552.136(c) of the Government Code allows 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).

Ref: ID# 518877

Enc. Submitted documents

c: Requestor
(w/o enclosures)