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TEXAS COMPTROLLER of PUBLIC ACCOUNTS

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July 18, 2007

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OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-45272-07

I.D. # 45272

RQ-0603-GA

Re: Attorney General Opinion Request Regarding House Bill 3430

Dear General Abbott:

This is a request for an opinion pursuant to Section 402.042 of the Texas Government Code. This request concerns the requirement established by House Bill 3430 (80th Leg., R.S., 2007) that the Texas Comptroller of Public Accounts (the "Comptroller") establish a public database of state expenditures. The specific questions posed are as follows:

- 1) Are net salary amounts paid to public employees public?
- 2) If net salary amounts are public, should the Comptroller withhold that information if other agencies mark the information as protected, pursuant to Government Code Section 403.024(d)?
- 3) Is payee county address information of public always employees public?
- 4) If payee county address information is always public, should the Comptroller withhold that information if other agencies mark the information as protected, pursuant to Government Code Section 403.024(d)?

These questions are being asked to ensure consistency in information the Comptroller of Public Accounts (the "Comptroller") will be providing to the public via a legislatively-mandated searchable state expenditure database.

Background

House Bill 3430 takes effect October 1, 2007, and provides in part that the Comptroller shall establish a public database of state expenditures that is readily searchable. Section 403.024 of the Government Code, as added by HB 3430, sets out certain database requirements:

- (b) The comptroller shall establish and post on the Internet a database of state expenditures, including contracts and grants, that is electronically searchable by the public except as provided by Subsection (d). The database must include:

- (1) the amount, date, payor, and payee of expenditures; and
- (2) a listing of state expenditures by
 - (A) object of expense with links to the warrant or check register level; and
 - (B) to the extent maintained by state agency accounting systems in a reportable format, class and item levels.
- (c) To the extent possible, the comptroller shall present information in the database established under this section in a manner that is searchable and intuitive to users. . . . At a minimum, the database must allow users to:
 - (1) search and aggregate state funding by any element of the information;
 - (2) ascertain through a single search the total amount of state funding awarded to a person by a state agency; and
 - (3) download information yielded by a search of the database.
- (d) The comptroller may not allow public access under this section to a payee's address, except that the comptroller may allow public access under this section to information identifying the county in which the payee is located. The comptroller may not allow public access under this section to information that is identified by a state agency as excepted from required disclosure under Chapter 552 or as confidential.

Pursuant to HB 3430, the agency is required to provide a listing of state expenditures to include amount, date, payor and payee of expenditures. Expenditure amounts include warrant payments to state agency and university employees. Information showing expenditure of public funds is generally deemed public under Government Code Section 552.022(a)(3), and public employee and officer salary information is deemed public under Government Code Section 552.022(a)(2). This agency has traditionally interpreted salary under 552.022(a)(2) to mean gross salary. In a 2006 informal ruling to this agency, Open Records Letter No. OR2006-01938, your office stated that "net salary and certain marked deductions" are confidential under Government Code Section 552.101, reasoning as follows: "We also conclude that the employee net salary is private financial information because, by its revelation, the fact of a private deduction can be ascertained." Tex. Att'y Gen. ORL-2006-01938 at 5 (2006). Open Records Letter No. 2006-01938 applied to the salary information of approximately 144,000 state agency employees. This

Honorable Greg Abbott

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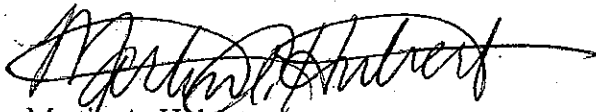
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ruling is currently being appealed¹ in part but not as to the portion regarding net salaries. We note that OR2006-01938 addressed net salary in connection with a request for salaries and salary deduction amounts—the agency had already released the gross salary amounts.

House Bill 3430 also provides that payee addresses are confidential, except that “information identifying the county in which the payee is located” may be provided. H.B. 3430, § 1 (80th Leg., R.S., 2007 *to be codified at* Tex. Gov’t Code § 403.024(d)). County information for public employees can be provided in reliance on the underlying home address. Government Code Sections 552.024, .117, and .1175 protect public employees’ home addresses from disclosure in certain situations. In a 1996 informal ruling to this agency, Open Records Letter No. OR96-0950, your office concluded that even partial address information—city and zip code—may not be released for those employees whose home address information is protected from disclosure. Tex. Att’y Gen. ORL-96-0950 at 2 (1996). County address information is compiled from home address information, which itself may be confidential. It may be that county address information is always public in nature, or it may be that HB 3430 specifically makes county address location public for payees, including public employees who have marked their home addresses as confidential.

In summary, we seek your guidance regarding the questions set out above. Thank you for your attention to this request for an opinion. Because the legislatively-mandated state expenditure database must be operational by October 1, 2007, we would appreciate your opinion on this matter as soon as possible. Should you need additional information regarding this matter, please feel free to contact me.

Sincerely,



Martin A. Hubert
Deputy Comptroller

¹ *Texas Comptroller of Public Accounts v. Attorney General of Texas v. The Dallas Morning News*, Cause No. 03-07-00102-CV (Tex. App.—Austin).