



The Attorney General of Texas

September 14, 1979

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Mr. Jerome Chapman, Commissioner
Texas Department of Human Resources
John H. Reagan Building
Austin, Texas 78701

Open Records Decision No. 226

Re: Is information in employee's
IRS Form W-2 public under Open
Records Act?

Dear Mr. Chapman:

You request our decision on whether information in an employee's Wage and Tax Statement, Internal Revenue Service Form W-2 is excepted from required public disclosure under section 3(a)(1) or 3(a)(2) of the Open Records Act, V.T.C.S. article 6252-17a. It is your position that it would be an invasion of an employee's privacy to disclose this information to the public.

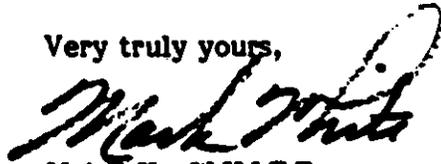
You have received a request for a copy of the 1978 earnings and taxes for a specified employee. Information on a Form W-2 includes an employee's name, address, social security number, total wages, tips, or other compensation, amount of federal income tax withheld, FICA tax withheld, and total FICA wages.

Some of the information included on the form is expressly made public under the Open Records Act. Section 6(a)(2) of the Act provides that the name, salary, title, and dates of employment of employees is public, and section 6(a)(3) provides that information in any account, voucher, or contract dealing with the receipt or expenditure of public funds is public unless otherwise made confidential by law. This office has held that the name, address and social security number of an employee is public, Open Records Decision No. 169 (1977); and that his or her salary or wages received is public information, Open Records Decision Nos. 139, 132 (1976); 59, 41, 37, 20, 14 (1974). Thus, this type of information is public and must be disclosed, and the fact that it appears on Form W-2 does not restrict access to it.

The issue then narrows to whether the amount of federal income tax withheld, FICA tax withheld and total FICA wages is excepted from required public disclosure. In Attorney General Opinion H-1274 (1978), this office held that information in a federal tax return submitted to a tax assessor-collector is excepted from required public disclosure under section 3(a)(1) as information deemed confidential by judicial decisions protecting privacy.

Return information is defined in 26 U.S.C. section 6103(b) to include deductions, exemptions, tax withheld, among other information. Section 6103(a) establishes the general rule that such information is confidential and restricts disclosure by federal and state officers and employees. 26 U.S.C. section 7213 makes it a felony offense for federal or state officers or employees to disclose return information. While the application of these provisions to a state agency as the employer who prepares the information is not clear, we believe that in light of these provisions and the prior decision in Attorney General Opinion H-1274 (1978), that the information on a Form W-2 concerning the amount of federal income tax withheld, FICA tax withheld, and total FICA wages is information made confidential by law and is excepted from required public disclosure under section 3(a)(1).

Very truly yours,



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