



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1995

Mr. Richard D. Monroe  
Deputy General Counsel for Operations  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 E. 11th Street  
Austin, Texas 78701-2483

OR95-943

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 31481.

The Texas Department of Transportation (the "department") received two open record requests from a former employee of the department. We understand that you have released some of the requested information to the requestor or are planning to do so. You have submitted to us copies of other documents and records which you seek to withhold from required public disclosure under Government Code sections 552.101 and 552.102.

You assert that the enclosed Form W-4's ("income tax forms") are excepted from disclosure by 552.101. Section 552.101 excepts from disclosure information made confidential by law. As the enclosed Form W-4's are made confidential as tax return information under title 26, section 6103(a) of the United States Code, you must withhold these documents in their entirety. Open Records Decision No. 600 (1992) at 8-9.

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<sup>1</sup>The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code ch. 552) (copy available from House Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

You assert that sections 552.101 and 552.102 except from disclosure the enclosed copies of employee driver's licenses. Section 552.102 excepts from required public disclosure information in a personnel file if such disclosure would constitute a clearly unwarranted invasion of personal privacy. The court in *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), ruled that the test to be applied to information claimed to be protected under section 552.102 is the same test formulated by Texas Supreme Court for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. The court formulated this test in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977), wherein it asserted that a governmental body must withhold information on common-law privacy grounds if the information is highly intimate or embarrassing information regarding an individual's private affairs and it is of no legitimate concern to the public. This office has previously held that a person's birthdate and height are not highly intimate in nature. Open Records Decision No. 455 (1987). Moreover, we believe a driver's license number is not highly intimate or embarrassing information; thus, the department may not withhold these parts of the driver's licenses under sections 552.101 or 552.102.

Section 552.117 of the Government Code, however, provides an employee of a governmental body the right to choose whether to allow public access to his or her home address. To do so, the employee must submit a written, signed request to his or her employer and strictly follow the procedures set forth in section 552.024 of the Government Code. If the employees whose driver's licenses (and voter registration certificate) you have enclosed properly requested that their home addresses be withheld from public disclosure prior to the date you received the request for such documents, you must redact the home addresses of such employees before disclosing these documents to the requestor.

You also seek to withhold disclosure of the enclosed social security cards under sections 552.101 and "federal law." In Open Records Decision No. 622 (1994), this office concluded that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the Social Security Act, 42 U.S.C. §405(c)(2)(C)(viii)(I), only if a governmental body obtained or maintains the social security number in accordance with a provision of law enacted on or after October 1, 1990. Thus, if the department obtained or maintains these employees' social security numbers pursuant to a statute enacted on or after October 1, 1990, the social security numbers must be redacted and withheld from the requestor.

You assert that the enclosed copies of personal checks are not "public information" as that term is defined in Government Code section 552.021. We disagree. This office generally considers information regarding a specific transaction between an individual and a public body to be public information. For example, this office has held that the amount of debt to a public hospital, together with the names of debtors and dates of delinquency, is not excepted by common-law privacy. Open Records Decision No. 385 (1983). We agree with you, however, that release of checking account numbers

and bank names to the requestor would be an unwarranted invasion of privacy under section 552.101. We believe that this is the kind of information that this office has previously concluded falls within the protection of common-law privacy. In Open Records Decision No. 373 (1983) this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. The decision concludes as follows:

all financial information relating to an individual--including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history--ordinarily satisfies the first requirement of common[-]law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person or ordinary sensibilities.

Open Records Decision No. 373 (1983) at 3. In Open Records Decision No. 545 (1990) this office applied a similar presumption to determine that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common-law privacy. Open Records Decision No. 545 (1990) at 4-5; *see also* Open Records Decision No. 600 (1992) at 9-12. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. Open Records Decision No. 373 (1983) at 4; *see also* Open Records Decision Nos. 600 (1992), 545 (1990).

Consistent with previous decisions of this office, we believe that the checking account numbers and bank names at issue here are intimate items of information about an individual's private affairs. *See Industrial Found.*, 540 S.W.2d at 685. Furthermore, we find no legitimate public interest in this information. *See id.* Consequently, we conclude that the checking account numbers and bank names on the enclosed personal checks are private under the common law, and the department must withhold such information pursuant to 552.101 of the Government Code.

Finally, in response to the second request, you seek to withhold certain documents under section 552.101 in conjunction with the "common law attorney-client privilege." Although this office has frequently cited section 552.101 to except from disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 552.107 of the Government Code. Open Records Decision No. 574 (1990). Section 552.107 excepts information if:

(1) it is information that ... an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

The protection of section 552.107(1) is limited to privileged material under Rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct. *Id.* at 5. The state bar rules define "privileged information," in part, as information protected by the attorney-client privilege of Rule 503 of the Texas Rules of Evidence. Thus, section 552.107 excepts only those communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11.

We have examined the information that you seek to withhold under the attorney-client privilege. This information clearly contains communications that reveal client confidences or an attorney's legal opinion or advice. We conclude, therefore, that section 552.107 of the Government Code excepts these documents from required public disclosure. The department may withhold this information under section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 31481

Enclosures: Submitted documents

cc: Mr. Leopoldo Fraga  
2422 Ridgemont Drive  
Missouri City, Texas 77489  
(w/o enclosures)