



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1996

Ms. Ellen Rathgeber
Staff Attorney
Texas State Treasury
P.O. Box 12608
Austin, Texas 78711-2608

OR96-1020

Dear Ms. Rathgeber:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36405.

The Texas State Treasury (the "treasury") received a request for a hard copy and a magnetic or electronic tape copy of:

1. All lists, indices, or other summary documents describing and/or listing all outstanding warrants and checks for dollar amounts of \$2,000.00 and more that were issued by the State of Texas and that have never been cashed, including but not limited to the warrant/check number, the dollar amount, the issue date, and payee name, and the agency that issued the check;
2. A copy of the back-up tape of that data from the Information Resource Division; and
3. All documents that describe and/or show the other computer format(s) in which the information is available.

The requestor later clarified her request and stated that she is not seeking any warrants from the Uniform Statewide Payroll System or payroll warrants not yet on that system, the names of the taxpayers to whom tax refund warrants were issued, the names of workers to whom worker compensation warrants were issued, the names of individuals to whom child support warrants were issued, the names of individuals to whom the Department of

Human Services issued public assistance warrants, and the names of individuals to whom unemployment compensation benefit warrants were issued. She also stated that she is not seeking home addresses, home phone numbers, or social security numbers of payees or information for warrants less than four months old as of October 2, 1995. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted samples of the information requested.¹ We have considered the exception you claimed and have reviewed the sample information.

You state that the treasury does not have information responsive to request numbers 1 and 3. A governmental body is not required to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision No. 534 (1989). Therefore, the treasury need not respond to request numbers 1 and 3.

As to request number 2, you claim that some of this information can be segregated from confidential information but express concern that some of the information in that segregated database is confidential by law. You also claim that some information on the treasury's database is confidential and cannot be segregated from non-confidential information. We first address the information that can be segregated from the non-confidential information: child support warrants, aid to families with dependent children ("AFDC") warrants issued for the Department of Human Services ("DHS"), and Texas Employment Commission ("TEC") warrants.

Segregable Information

Section 231.108 is found in chapter 231 of the Family Code, which pertains to the administration of Title IV-D child support programs. Chapter 231 contains the following provisions:

Sec. 231.001. DESIGNATION OF TITLE IV-D AGENCY.

The office of the attorney general is designated as the state's Title IV-D agency.

* * * *

Sec. 231.004. TITLE IV-D REGISTRY.

The Title IV-D agency shall establish a registry for Title IV-D cases that shall:

¹In reaching our conclusion here, we assume that the "representative sample" of information submitted to this office is truly representative of the requested information 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 information that is substantially different from that submitted to this office.

- (1) receive child support payments;
- (2) maintain a record of child support paid and any arrearages owed under each order;
- (3) distribute child support payments received as required by law; and
- (4) maintain custody of official child support payment records.

* * * *

Sec. 231.108. CONFIDENTIALITY OF RECORDS AND PRIVILEGED COMMUNICATIONS

(a) [A]ll files and records of services provided under this chapter, including information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father, are confidential.

In reviewing the sample warrant submitted to this office for review, we believe that the entire child support warrant is confidential under section 231.108 of the Family Code and, accordingly, must be withheld under section 552.101.

We next address the AFDC warrants. As to these warrants, we believe that section 12.003 of the Human Resources Code applies. Section 12.003 provides:

Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

In Open Records Decision No. 584 (1991), this office concluded that the language of this statute "clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Open Records Decision No. 584 (1991) at 3. The release of the requested information pursuant to this request does not appear to be "for purposes directly connected with the administration of the department's assistance programs." Therefore, the treasury must withhold the AFDC warrants.

The next warrants which you claim may contain confidential information are TEC warrants for unemployment compensation benefits. Federal regulations address unemployment compensation information. These regulations, found at 20 C.F.R. §§ 603.1 *et seq.*, provide, in relevant part:

603.1 Purpose

.....

(b) Section 2651(d) of Pub. L. 93-396 added a new section 303(f) of the Social Security Act (42 U.S.C. 503(f)), to provide that the agency charged with the administration of the State unemployment compensation law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of Section 1137 of the Social Security Act, as added by Pub. L. 98-369. The regulations in this part are issued to implement this requirement.

603.2 Definitions.

For the purposes of this Part:

.....

(c) 'Claim information' means information regarding:

(1) Whether an individual is receiving, has received or has applied for unemployment compensation;

(2) The amount of compensation the individual is receiving or is entitled to receive;

.....

(5) Any other information contained in the records of the State unemployment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

.....

603.7 Protection of confidentiality.

(a) State unemployment compensation agencies shall require requesting agencies receiving information under this part to comply with the following measures to protect the confidentiality of the information against unauthorized access or disclosure:

[six measures are listed]

(b) Any requesting agency is authorized to redisclose the information only as follows:

[three circumstances are listed]

(c) The requesting agency shall permit the State unemployment compensation agency to make onsite inspections to ensure that the requirements of State unemployment compensation laws and Federal statutes and regulations are being met (section 1137(a)(5)(B)).

We note that this office has previously concluded that a transfer of information between state agencies does not destroy the confidentiality of information. Attorney General Opinion H-917 (1976); Attorney General Opinion H-242 (1975); Open Records Decision Nos. 561 (1990), 387 (1983), 272 (1981). Therefore, it appears that, under federal law, any information contained in the TEC records that is needed by the treasury to verify eligibility for, and the amount of, benefits is confidential and may not be disclosed to the requestor. We believe that at least the amount of the warrant is included within the information needed to verify the amount of benefits and, accordingly, must be withheld. Any information contained in the TEC warrants not needed by the treasury to verify eligibility for and the amount of benefits may not be withheld from required public disclosure.

Non-Segregable Information

You claim that the remainder of the requested information which you contend is confidential cannot be segregated from the non-confidential information. The information that you claim is confidential consists of: tax refund warrants, worker's compensation warrants, and the warrants for assistance programs administered by DHS with the exception of AFDC warrants. We conclude that, for the same reasons that AFDC warrants are confidential, information on warrants for all other assistance programs administered by DHS is confidential by law. See Hum. Res. Code § 12.003.

Similarly, we conclude that the amounts of tax refund warrants in this instance are confidential by law. In *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995), the court held that "the *amounts* of assessed deficiencies, refunds, or credits are derived from taxpayer-furnished information, and are thus confidential." [Emphasis in

original.] Therefore, we conclude that the treasury must withhold the amounts of the tax refund warrants under the supreme court's decision in *A & T* as applied through section 552.101 of the Government Code.

The next category of information that we will address is worker's compensation commission warrants. Sections 402.083 and 402.086 make confidential information in or derived from a claim file regarding an employee. The treasury claims that the amount of the warrant is confidential because it is derived from a claim file. We disagree. In Open Records Decision No. 619 (1993), this office concluded that section 402.083 makes confidential only information in or derived from a claim file that explicitly or implicitly discloses the identity of the employee filing the workers' compensation claim. As the requestor is not seeking the identity of the employee and we believe that the remainder of the information on the warrant does not disclose the identity of that employee, the treasury may not withhold the worker's compensation warrant information.

We now address the treasury's claim that it cannot segregate certain of the warrants that contain confidential information from warrants that do not contain confidential information. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the court held:

The means of access to information in government records may be controlled by the determination of what records must be disclosed, insofar as the procedure must adequately protect information deemed confidential from improper disclosure. If a direct computer tie-in could not be effectuated without giving the Foundation access to information to which it is not entitled, then of course the procedure would not be acceptable.

Industrial Foundation, 540 S.W.2d at 687. Similarly, this office has frequently concluded that if public information is "inextricably intertwined" with information that may be withheld under the act, all of the information may be withheld. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 470 (1987), 393 (1983), 239 (1980), 174 (1977). Therefore, as tax refund warrants cannot be segregated from other information, the information that we have concluded is confidential under section 552.101 must be withheld from all warrants in that database.

The requestor is arguably seeking information that is not currently on the Uniform Statewide Payroll System ("USPS") regarding bonus and reimbursement warrants.² You state that the treasury cannot distinguish between reimbursement warrants and other warrants issued by the comptroller, including tax refund warrants and vendor warrants. You further state that the treasury cannot distinguish between payroll warrants and bonus

²We note that the requestor has stated that she is not seeking information on the USPS or payroll information that has not yet been put on the USPS. However, this leaves open the question of bonus and reimbursement warrants that are not yet on the USPS.

warrants. You say that although the treasury can ascertain that the agencies which do not use the USPS have outstanding warrants, it cannot determine to what categories these warrants belong. Therefore, to comply with the request, the treasury will have to contact each agency that does not use USPS and inquire as to the categories of all warrants that are outstanding. The same is true of non-AFDC assistance program warrants issued for DHS. The treasury states that so long as those assistance program warrants are issued from certain identifiable funds, the treasury can segregate out the information if the DHS informs the treasury as to which funds are the sources of the assistance program warrants.

The requestor has asked for this information in an electronic form. In the most recent legislative session, the legislature substantively amended chapter 552 of the Government Code. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 1, 1995 Tex. Sess. Law Serv. 5127. As part of this revision, the legislature added section 552.231, which provides:

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form as determined in accordance

with the rules established by the General Services Commission under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of the receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or in the form in which it is available until the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or

(2) wants the information in the form in which it is available.

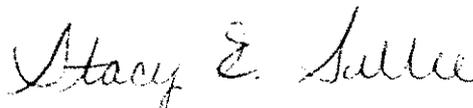
(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

We assume that, in complying with subsection (b) of section 552.231, the treasury will include the services, costs, and time needed to contact the various agencies that are not on the USPS and DHS to determine the sources of funds or other appropriate information needed to segregate the requested information.³

³As we have held that the amounts of tax refund warrants are confidential, to the extent that the treasury cannot segregate between tax refund warrants and reimbursement warrants, the treasury must withhold all warrant amounts. The same is true for non-AFDC DHS assistance program warrants. If DHS cannot supply the information necessary to segregate these warrants from other DHS warrants, all DHS warrant information must be withheld.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref: ID# 36405

Enclosures: Submitted documents

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