



Office of the Attorney General  
State of Texas

January 2, 1997

DAN MORALES  
ATTORNEY GENERAL

Ms. Donna Garcia Davidson  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR97-0001

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102632.

The Office of the Governor (the "Governor's Office") has received a request for a variety of information and records, generally, concerning an event which took place in the Governor's Press Conference room on June 3, 1996, and other matters regarding certain individual's payroll records. You state that some information responsive to the request is available for review by the requestor "and a letter has been sent to schedule an appointment for his review of the[se] documents." You contend, however, that certain portions of the submitted documents are excepted from required public disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

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<sup>1</sup>We note that constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

You claim that some information in the submitted payroll records is protected by a right of privacy under sections 552.101 of the Government Code. Generally, information concerning financial transactions between an employee and a public employer is of legitimate public interest. Open Records Decision Nos. 600 (1992) (where transaction is funded in part by the state, it involves the employee in transaction with the state, and is not protected by privacy), 545 (1990), 523 (1989). We further note that the legitimate public interest extends to information showing that the employee has enrolled persons in addition to himself in the state insurance plan. *Id.*

However, this office has determined that some personal financial information is highly intimate or embarrassing, and thus it meets the first part of the *Industrial Foundation* test. *Id.* Information is protected from disclosure if it relates to employees' personal financial decisions to allocate portions of their compensation to optional benefits which involve no state funding. *Id.* The employees' optional coverages generally will be funded by the employee and not the state. Optional benefits may include participation in TexFlex (employee benefit plan that allows employee to choose between cash compensation and one or more tax-exempt fringe benefits); participation in deferred compensation plans, including purchase of saving bonds; and purchase of optional life, accident, dependent life or disability insurance. *Id.* Thus, a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common-law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). The submitted payroll records include information about how certain employees have allocated their pretax compensation to one or more of the following optional coverages or programs: dental care, health care, dependent care, or disability coverage. Accordingly, we have marked the information that must be withheld under section 552.101 of the Government Code as it incorporates common-law privacy.

You also seek to withhold, under common-law privacy, information from the submitted payroll records which appears to indicate that certain employees have enrolled in the direct deposit program. This office has held that "direct deposit authorization forms" showing an employee's decision to enroll in direct deposit of his compensation, the name of the bank, and the account number are excepted from disclosure under section 552.101. Open Records Decision Nos. 600 (1992) at 11-12. Although the submitted payroll records include the amount of state compensation directly deposited into the employees bank account, the information you seek to withhold concerns a financial transaction between an employee and a public employer and it does not appear to disclose the type of information contemplated to be protected in direct deposit authorization forms, since the bank name and account number are not disclosed. Therefore, you may not withhold this category of information from the requested payroll records.

Additionally, you contend that some of the information on the submitted "judicial questionnaires . . . may be subject to exception on the basis that the disclosure could constitute an invasion of privacy." This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some

kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), and 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, after a review of the questionnaires it does not appear that any of the submitted information is protected by a right of privacy.<sup>2</sup> *See* Open Records Decision No. 600 (1992) (whether report of injury by injured person contains private information depends on nature and facts included in report). Furthermore, we note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987). Therefore, you may not withhold this information from required disclosure pursuant to a common-law right of privacy. Open Records Decision No. 600 (1992) at 4-5 (intrusion of individuals' right of privacy may be justified by legitimate state interest).

We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>3</sup> 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,



Sam Haddad

Assistant Attorney General  
Open Records Division

SH/ch

Ref: ID# 102632

Enclosures: Marked documents

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<sup>2</sup>Section 552.101 encompasses information protected by other statutes. In Open Records Decision No. 641 (1996), this office determined that medical information obtained pursuant to the Americans with Disabilities Act of 1990 (the "ADA") 42 U.S.C. § 12101 *et seq.*, is confidential under section 552.101 of the Government Code in conjunction with 42 U.S.C. § 12112. *See also* 29 C.F.R. § 1630.14(b)(1). Additionally, certain medical records are confidential under section 552.101 of the Government Code in conjunction with the Medical Practice Act, ("MPA"), V.T.C.S. article 4495b. In reviewing the submitted information, it appears that neither the provisions of the ADA nor the MPA apply to the submitted information.

<sup>3</sup>In reaching our conclusion, we assume that the records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

cc: Mr. John Cullar  
McClennan County Democratic Party  
P. O. Box 7872  
Waco, Texas 76714  
(w/o enclosures)