



February 8, 1999

Mr. William C. "Bill" Sowder
Lubbock County
Criminal District Attorney
P.O. Box 10536
Lubbock, Texas 79408-3536

OR99-0363

Dear Mr. Sowder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121772

The Lubbock County Sheriff's Office received a request for the personnel file of a named employee. You inform this office that the employee is a peace officer. You ask whether you must release specified documents, including a court order, submitted as Exhibit 2, under section 552.117 of the Government Code. You also ask whether you must withhold certain federal tax documents, submitted as Exhibit 3, under section 552.101 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You first question whether you may release the documents contained in Exhibit 2. Section 552.117 of the Government Code provides that information may be withheld if it is:

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

* * *

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

You indicate that the employee is a peace officer as defined by article 2.12 of the Code of Criminal Procedure. You must, therefore, withhold information revealing whether the officer has family members. Open Records Decision Nos. 532 (1989), 530 (1989). You

assert that release of any of the material in Exhibit 2 would reveal whether the officer has family members. We agree. *See, e.g.,* Open Records Decision Nos. 584 (1991), 9 (1973). The information in Exhibit 2 must be withheld.

You next contend that certain of the officer's federal tax documents are excepted from disclosure under section 552.101. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). After reviewing your arguments and the records in Exhibit 3, we find that you must withhold the officer's tax records from disclosure under section 552.101 as information deemed confidential by federal statute.

One of the documents in Exhibit 3, however, is not covered by the federal statutes. It is a Sheriff's Office's employee payroll record. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. 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 at 1 (1992).

We have previously stated that

[i]n our opinion, 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 of ordinary sensibilities.

Open Records Decision No. 373 at 3 (1983); *see* Open Records Decision No. 545 at 4-5 (1990). In fact, several prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of their salary to a voluntary investment program offered by their employer is a personal investment decision, and information about it is

generally excepted from disclosure by a common-law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Open Records Decision No. 600 (1992) (mandatory state retirement program).

Although the document at issue arguably involves a financial transaction with the federal government, it does not relate to the expenditure of any state funds or effect the net compensation paid by your office. We believe that the document at issue merely consists of information involving personal decisions not relating to the officer's employer or public funds. It does not involve a financial transaction funded in whole or in part by the state. *See* Open Records Decision Nos. 600 (1992). Consequently, you must also withhold the marked document in Exhibit 3 under section 552.101.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 121722

Enclosures: Submitted documents

cc: Mr. Troy L. Coon
1106 Kewaner
Lubbock, Texas 79407
(w/o enclosures)