



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2004

Ms. Danielle L. Hargrove
Attorney at Law
16106 Deer Crest
San Antonio, Texas 78248

OR2004-5433

Dear Ms. Hargrove:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 204481.

The Cameron Appraisal District (the "district"), which you represent, received a request for all documents in a former district employee's personnel file. You state that the district has released much of the requested information. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses the common-law right to privacy. Section 552.102(a) of the Government Code protects information in a personnel file, the disclosure of which would constitute a clearly

¹We note that, in your April 29, 2004 letter to this office, you also claimed that the requested information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. Because you have not submitted arguments explaining how those exceptions are applicable, we assume you have withdrawn your claim that they apply to any of the submitted information.

²We note that two pages included in Exhibit A pertain to individuals other than the individual whose file is the subject of this request. We have marked these documents, which the district need not release in response to this request, and this ruling will not address that information.

unwarranted invasion of personal privacy. The test for determining whether information is excepted under section 552.102 is the same as the one used to decide whether it is protected by the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs).

Common-law privacy under section 552.101 also encompasses certain types of personal financial information. This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of state employees' personnel records), 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities."), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Thus, a public employee's allocation of part of the employee's salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common law privacy. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (participation in TexFlex), 545 at 3-5 (1990) (deferred compensation plan). Likewise, an employee's designation of a retirement beneficiary, choice of optional insurance coverage, choice of a particular insurance carrier, decision regarding the direct deposit of compensation and the forms that allow allocation of pretax compensation to group insurance, health care or dependent care are all excepted from disclosure under the common-law right to privacy. *See* Open Records Decision No. 600 at 9-12 (1992). However, where a transaction is funded in part by a governmental body, it involves the employee in a transaction with the governmental body, and the basic facts about that transaction are not protected by common-law privacy. *Id.* at 9. Having reviewed the submitted personnel file that you have labeled Exhibit A, we have determined that some of the information is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. We have marked the

information in Exhibit A that the district must withhold under section 552.101 in conjunction with the common-law right to privacy.

We note that the submitted file contains Form W-4s. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (Form W-4s). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). We determine that the submitted Form W-4s are tax return information and therefore excepted from disclosure under section 552.101 as information made confidential by federal law. These documents must be withheld in their entirety.

We next address your claim that section 552.117 is applicable to portions of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Exhibit A contains the named former district employee's section 552.024 election form. The election form reflects that, on June 1, 2001, the named former district employee elected to withhold his home address, home telephone number, and social security number from public disclosure. As such, the district must withhold this information, which we have marked in Exhibit A, from public disclosure under section 552.117(a)(1). Further, if the named former district employee also timely elected to withhold information that reveals whether he has family members, the district must also withhold this information under section 552.117(a)(1). We have marked this additional information that the district must withhold if the named former district employee so elected. The district may not withhold this information under section 552.117(a)(1) if the named former district employee did not make a timely election to keep the information concerning family members confidential.

Finally, we note that section 552.130 of the Government Code is applicable to portions of the submitted information.³ Section 552.130 provides in relevant part:

³The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license number and related information that we have marked in Exhibit A under section 552.130.

In summary, you must withhold the information we have marked in Exhibit A under section 552.101 in conjunction with the common-law right to privacy. You must withhold the Form W-4s under section 552.101 in conjunction with federal law. You must withhold the named former district employee's home address, home telephone number, and social security number that we have marked in Exhibit A from disclosure under section 552.117. If the named former district employee also elected to withhold information that reveals whether he has family members, the district must also withhold this information under section 552.117. You must withhold the driver's license number and related information that we have marked under section 552.130. All remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 204481

Enc. Submitted documents

c: Mr. Ray Garcia
613 Deer Country
San Antonio, Texas 78253
(w/o enclosures)