



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2004

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773

OR2004-8988

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211592.

The Department of Public Safety (the "department") received a request for the 2003 W-2 form and specified payroll stubs of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we must address the department's obligations under section 552.301 of the Government Code, which describes the procedures a governmental body must follow if it wishes to withhold information under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

While you timely submitted the requested W-2 form, you did not submit the requested payroll stubs within the fifteen-day deadline mandated by section 552.301. *See Gov't Code* § 552.301. Because the requested payroll stubs were not timely submitted, they are presumed to be public information. *Id.* § 552.302. In order to overcome the presumption that the requested payroll stubs are public information, the department must provide compelling reasons why this information should not be disclosed. *Id.*; *Hancock v. State Bd.*

*of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You assert that portions of the requested payroll stubs are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. Sections 552.101 and 552.117 can provide compelling reasons to overcome the presumption of openness; therefore, we will consider whether these claims require you to withhold the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Information must be withheld under section 552.101 in conjunction with common-law privacy if the information is highly intimate or embarrassing and it is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (Employee’s Withholding Allowance Certificate; designation of beneficiary of employee’s retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee’s mandatory contributions to the state retirement system. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the state. *Id.* We have marked the payroll stub information excepted by section 552.101 in conjunction with common-law privacy because the financial information does not relate to a transaction with a governmental body.

You also assert that the employee’s social security number is excepted under section 552.117 of the Government Code. You do not indicate whether the employee is a peace officer. Section 552.117(a)(1) excepts from disclosure social security numbers of current or former 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 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, if the employee is not a peace officer, the department may only withhold the social security number under section 552.117(a)(1) if the employee made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Section 552.117(a)(2) provides that a social security number of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer complied with section 552.024 of the Government Code. Therefore, if the employee is a peace officer, you must withhold the officer’s social security number under section 552.117(a)(2) of the Government Code.

Even if not protected by section 552.117, social security numbers may be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we address your section 552.101 claim for the timely submitted W-2 form. Section 552.101 of the Government Code exempts information considered to be confidential by statute. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the department must withhold the submitted W-2 form pursuant to section 552.101 of the Government Code.

In summary, you must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the employee is a peace officer, you must withhold the social security number pursuant to section 552.117(a)(2) of the Government Code. Otherwise, the social security number must be withheld under section 552.117(a)(1) if the employee timely elected to keep that information confidential. The social security number may be confidential under federal law. The W-2 form must be withheld from disclosure pursuant to section 552.101 in conjunction with federal law. The remaining information must be released.

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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 211592

Enc. Submitted documents

c: Ms. Heather Rodriguez  
P.O. Box 363  
Goliad, Texas 77963  
(w/o enclosures)