



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2004

Ms. Susan Camp-Lee
Sheets & Crossfield, PC
309 East Main Street
Round Rock, TX 78664-5246

OR2004-9499

Dear Ms. Camp-Lee:

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# 215608.

The City of Hutto (the "city"), which you represent, received a request for the complete personnel file of a named city employee. You state that the city has released some of the requested information, but you claim that the remaining 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses federal law. Federal tax return information, including employee W-4 forms, is confidential under federal law. 26 U.S.C. § 6103(a). Therefore, the city must withhold the W-4 forms from disclosure under section 552.101 in conjunction with federal law.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. 540 S.W.2d at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is confidential under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, a public employee's salary earned from public employment is not private because it involves a financial transaction with a governmental body. *See generally* Gov't Code § 522.022(a)(2). We have reviewed the submitted documents and conclude that they are not protected by common law privacy. *See* Open Records Decisions Nos. 342 (1982), 329 (1982), and 298 (1981) (qualifications of public employee, including experience, licenses and certificates, professional awards and recognition, tenure, salary, educational level, membership in professional organizations, and previous employment are available to the public).

We note, however, that a portion of the submitted check must be withheld under section 552.136.¹ Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the marked bank account number under section 552.136.

Lastly, the submitted documents also contain information that is excepted from disclosure under section 552.117(a)(1). 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 city 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. In this instance, the city employee timely elected to keep her personal information confidential; therefore, the city must withhold the employee's home address and telephone number, social security number, and any information that reveals whether the employee has family members. We have marked this information accordingly.

In summary, the employee's W-4 forms must be withheld under section 552.101 in conjunction with federal law, and the employee's home address and telephone number, social security number and any information that reveals whether she has family members must be

¹The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withheld under section 552.117(a)(1). The marked bank account number must be withheld under section 552.136. 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 cursive script that reads "Karen Hattaway".

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/EAS/krl

Ref: ID#215608

Enc. Submitted documents

c: Mr. John Judge
Judge, Kostura & Putman, PC
2901 Bee Cave Road, Box L
Austin, TX 78746
(w/o enclosures)