



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 23, 2004

Ms. Myrna S. Reingold  
Galveston County  
4127 Shearn Moody Plaza  
123 Rosenberg  
Galveston, Texas 7750-1454

OR2004-9974

Dear Ms. Reingold:

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# 213554.

Galveston County (the "county") received a request for all representative payee reports prepared by the county social services department with regard to a named individual from June 1, 1975 until December 1, 2003. You believe that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the information you submitted.<sup>1</sup>

Initially, we address the county's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code § 552.301(b)*. Section 552.301(e) requires the governmental body to submit to the attorney general, not

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county to withhold any information that is substantially different from the submitted information. *See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988)*.

later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

In this instance, the county did not request this decision within the ten-business-day period prescribed by section 552.301(b). The submitted information is therefore presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As your claims under section 552.101 can provide compelling reasons for non-disclosure under section 552.302, we will address your arguments under this exception.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute.<sup>2</sup> You ask whether the county must withhold the submitted information under the federal Privacy Act, section 552a of title 5 of the United States Code. Section 552a provides in part that "[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains[.]" 5 U.S.C. § 552a(b). We note, however, that for purposes of section 552a, "agency" means an agency, department, corporation, or other instrumentality of the federal government. *See id.* §§ 552(a)(1), 552(f)(1); *see also St. Michael's Convalescent Hospital v. State of California*, 643 F.2d 1369, 1373 (9<sup>th</sup> Cir. 1981) (definition of agency under Privacy Act does not encompass state agencies or bodies); *Shields v. Shetler*, 682 F.Supp. 1172, 1176 (D. Colo. 1988) (Privacy Act does not apply to state agencies or bodies). In this instance, the information in question is maintained by the county. Thus, the Privacy Act is not applicable

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<sup>2</sup>*See also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

to the submitted information, and the county may not withhold the information on that basis under section 552.101 of the Government Code.

You also assert that the representative payee reports are information that the Social Security Administration would be prohibited from disclosing under section 1306 of title 42 of the United States Code. Section 1306 provides in part:

(a) Disclosure prohibited, exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under Title VIII of the Social Security Act [42 U.S.C.A. § 1001 et seq.] or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by an officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under [chapter 7 of title 42 of the United States Code], and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency shall be made except as the head of the applicable agency may be regulations prescribe and except as otherwise provided by federal law.

(2) For purposes of this subsection . . . the term “applicable agency” means –

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such administration or matter disclosed by such administration; or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

42 U.S.C. § 1306(a). You indicate that the submitted representative payee reports are prepared by the county social services department for submission to the federal Social Security Administration. Thus, it does not appear to this office that these documents constitute information obtained from the Social Security Administration or the federal

Department of Health and Human Services, for purposes of section 1306. *See O'Neill v. Engels*, 125 F.R.D. 518, 519 (S.D. Fla. 1989) (42 U.S.C. § 1306 not applicable to information obtained from anyone other than federal officials). We therefore conclude that the submitted information is not confidential under section 1306. Consequently, the county may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 1306 of title 42 of the United States Code.

You also contend that the submitted information is confidential under section 6103 of title 26 of the United States Code. Section 6103 provides in part:

(a) General rule. – Returns and return information shall be confidential, and except as authorized by [title 26 of the United States Code] –

(1) no officer or employee of the United States, [and]

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section,

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shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

(b) Definitions. – For purposes of this section –

(1) Return. – The term “return” means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information. – The term “return information” means –

(A) a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld,

deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof), of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(a)-(b). You have not demonstrated that the submitted representative payee reports constitute "returns" under section 6103(b)(1). Likewise, you have not shown that these documents either consist of or contain "return information" for purposes of section 6103(b)(2). Thus, you have not shown that these documents are confidential under section 6103, and therefore the county may not withhold these documents under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

You also raise section 552.101 in conjunction with section 12.003 of the Human Resources Code. This section provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [Texas Department of Human Services] or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a); *see also id.* § 21.012(a) (Department of Human Services shall provide safeguards that restrict use or disclosure of information concerning applicants for or recipients of department's assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 584 at 1-3 (1991) (Hum. Res. Code §§ 12.003 and 21.012 applicable to Department of Human Services as agency responsible for administering federal assistance programs). In this instance, there is no indication that the submitted information was directly or indirectly derived from the records of the former Texas Department of Human Services. We therefore conclude that the county may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.

Section 552.101 also encompasses constitutional and common-law privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first

is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that the United States Supreme Court has recognized. *See Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* Open Records Decision No. 455 at 7 (1987). Constitutional privacy is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy encompasses certain types of personal financial information. This office has determined that financial information that relates 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 certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding 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).

We find that the submitted information is protected by common-law privacy under section 552.101. We note, however, that the requestor identifies himself as an attorney for the individual to whom the information pertains. As this individual’s attorney, the requestor would have a special right of access to information that is protected from public disclosure under laws that are intended to protect the personal privacy interests of the requestor’s client. *See* Gov’t Code § 552.023.<sup>3</sup> If the requestor has a special right of access to the submitted information under section 552.023, then this information may not withheld from him on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987)

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<sup>3</sup>Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

(privacy theories not implicated when individual requests information concerning himself). Otherwise, the county must withhold the submitted information from the requestor under section 552.101 in conjunction with common-law privacy.<sup>4</sup>

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

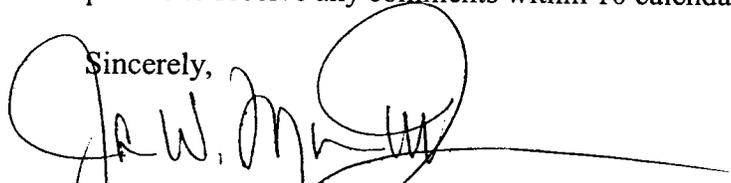
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<sup>4</sup>We note that the requestor would also have a special right of access, as the authorized representative of the subject of the information, to information that the county would be required to withhold from the public under section 552.101 in conjunction with constitutional privacy.

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, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 213554

Enc: Submitted documents

c: Mr. Vic Bonner  
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(w/o enclosures)