



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2005

Ms. Margo Kaiser  
Staff Attorney  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2005-07579

Dear Ms. Kaiser:

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# 230677.

The Texas Workforce Commission (the "commission") received a request for specific information pertaining to a named individual. You claim that the submitted 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.<sup>1</sup>

Initially, we note that the commission has failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from us and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See Gov't Code* § 552.301(b). Additionally, under section 552.301(e), a governmental body is required

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

You state, and the submitted information reflects, that the commission received the initial request for information from the requestor on May 3, 2005. Accordingly, you were required to submit your request for a decision to this office no later than May 17, 2005. Further, you were required to submit the items enumerated under section 552.301(e) to us no later than May 24, 2005. Although you state that the "requestor provided clarification of his request" on June 3, 2005, you have not informed us of the date on which the commission sent the requestor the correspondence that triggered the clarification. *See Gov't Code § 552.222; see also Open Records Decision No. 31 (1974)* (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). Since we are unable to calculate how the deadlines mandated by section 552.301 are tolled, we find that the commission failed to comply with the procedural requirements mandated by section 552.301 in requesting this decision from us. *See Gov't Code § 552.301; see also Open Records Decision No. 663 at 5 (1999)* (providing that ten-day period is tolled during the clarification process).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *Open Records Decision No. 319 (1982)*. Generally speaking, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. *Open Records Decision No. 150 at 2 (1977)*. Because sections 552.101 and 552.117 can constitute compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

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 exception encompasses information that another statute makes confidential. You argue that the some of the submitted information is excepted from disclosure under title 26 of section 6103(a) of the United States Code. Section 6103(a) makes federal tax return information confidential. The term "return information" includes "the nature, source, or

amount of income” of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part, vacated in part on other grounds*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find that the submitted information was not gathered by the Internal Revenue Service in accordance with title 26 of section 6103(a) of the United States Code. Accordingly, you may not withhold the submitted information on this basis.

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information that 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 Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Certain kinds of personal financial information are protected by common-law privacy under section 552.101. In prior decisions, 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, e.g.,* Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files).

The commission asserts that the submitted information contains private personal financial information. The commission indicates that the information in question relates to employee benefits that are funded entirely by the employee and do not involve any financial contribution on the part of the commission. Based on this representation, we agree that the commission must withhold this type of employee benefit information under section 552.101 in conjunction with common-law privacy. We have marked the employee financial information that is protected by common-law privacy and must be withheld under section 552.101.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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. We note that a post office box number is not a “home address” for purposes of section 552.117.<sup>2</sup> 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). You advise that the individual at issue made an election prior to the receipt of the request to keep such personal

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<sup>2</sup>*See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home).

information confidential under section 552.024. Pursuant to section 552.117(a)(1), the commission must withhold this personal information. We have marked information that must be withheld under section 552.117.

In summary, the marked information that is protected by common-law privacy must be withheld under section 552.101. The information we have marked must be withheld under section 552.117(a)(1) as the individual timely elected to keep the information confidential under section 552.024. The rest of the submitted 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 commission or county attorney. *Id.* § 552.3215(e).

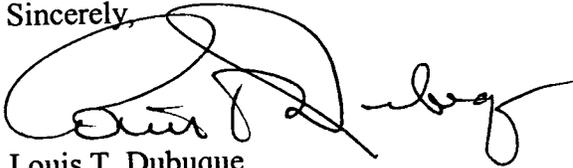
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Louis T. Dubuque  
Assistant Attorney General  
Open Records Division

LTD/seg

Ref: ID# 229840

Enc. Submitted documents

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(w/o enclosures)