



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

12195September 4, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-12195

Dear Ms. Byles:

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#320721.

The City of Fort Worth (the "city") received a request for the civil service and personnel file of a named firefighter. You state that most of the responsive information has been released to the requestor. You state you have redacted Texas motor vehicle information under section 552.130 of the Government Code pursuant to the previous determinations issued in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You state that you have also redacted social security numbers under section 552.147.¹ You claim that the remaining information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. This office has held that section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of income." *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the city must withhold the submitted W-4 form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See Open Records Decision Nos. 600* (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). You assert that a portion of the submitted information, which you have marked, is confidential under common-law privacy. You state that the city does not financially contribute to a public employee's participation in health insurance, long-term disability, flexible spending accounts, pre-paid legal, dental insurance, parking, life insurance, voluntary leave bank enrollment, credit union, and assignment of benefits. Upon review, we find that the information we have marked is protected by common-law privacy, and the city must withhold this information under section 552.101 of the Government Code. However, the remaining information you seek to withhold under this exception is not highly intimate or embarrassing information of no legitimate public concern. Therefore, none of the remaining information you have marked is confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code.

You claim that portions of the submitted information are excepted under section 552.117 of the Government Code. Section 552.117(a)(1) 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 of the Government Code. Gov't Code § 552.117(a)(1). Whether 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). Pursuant to section 552.117(a)(1), the city must withhold the personal information that pertains to a current or former employee of the city who elected, prior to the city's receipt of the request for information, to keep such information confidential. The submitted information contains a copy of the firefighter's election form in which she timely elected confidentiality for her social security number, but has chosen to release her home

address, telephone number, and family member information. Accordingly, the city may not withhold the firefighter's home address, telephone number, or family member information pursuant to section 552.117(a)(1) of the Government Code. However, the submitted documents also include the family member information of other current or former city employees. If these individuals timely elected to keep this information confidential under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). The city may not withhold this information under section 552.117(a)(1) if the individuals did not make a timely election to keep this information confidential.

You also assert that some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. This section 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. We note that because check numbers do not constitute access device numbers, section 552.136 is not applicable to this information. However, the district must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the submitted W-4 form under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the financial information we have marked pursuant to section 552.101 and common-law privacy. To the extent the current or former employees timely elected to keep their family information confidential under section 552.024, the city must withhold the information we have marked under section 552.117. Finally, the city must withhold the marked routing and account numbers in accordance with 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 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 challenge 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 Office of the Attorney General 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. 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#320721

Enc. Submitted documents

c: Mr. Ralph Hunt
2707 English Chase Court
Arlington, Texas 76106
(w/o enclosures)