



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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OR2008-15021

Dear Ms. Fleming and Mr. West:

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# 326594.

The Texas Department of Criminal Justice (the “department”) received a request for information relating to a named individual. The department’s Office of the General Counsel (the “OGC”) and its Office of the Inspector General (the “OIG”) have submitted separate briefs, as well as separate documents, that each seeks to withhold from disclosure. The OGC and the OIG each states it will release some of its responsive information. The OGC claims portions of its submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. The OIG states that it is withholding a portion of the requested information pursuant to the previous determination issued by this office in Open

Records Letter No. 2005-01067 (2005).<sup>1</sup> The OIG also states it is withholding social security numbers under section 552.147 of the Government Code.<sup>2</sup> The OIG claims portions of its submitted information are excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the claimed exceptions 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 exception encompasses information other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. See 8 U.S.C. § 1324a(b)(5); see also 8 C.F.R. § 274a.2(b)(4). In this instance, the release of the submitted Form I-9 would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may only be released for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, we agree the department must withhold the Form I-9 the OGC has submitted under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . ., or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). 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*, 993 F.2d 1111

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<sup>1</sup>Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

<sup>2</sup>Section 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.

(4th Cir. 1993). The department must withhold the W-2 and W-4 forms the OGC submitted pursuant to federal law.

The OGC also claims common-law privacy for portions of its remaining information. Section 552.101 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600* (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 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). Upon review of the information at issue, we find portions of it are highly intimate and embarrassing and not of legitimate public interest. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, no part of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

The OGC also claims portions of its remaining information includes an e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code § 552.137(a)-(c)*. The e-mail address in the information at issue is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137, unless the owner of the e-mail address has affirmatively consented to its release. *See id.* § 552.137(b).

We note some of the remaining information submitted by the OGC is confidential under section 552.117(a)(3) of the Government Code.<sup>3</sup> Section 552.117(a)(3) excepts from public disclosure the present and former home addresses and telephone numbers, social security

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481* (1987), 480 (1987), 470 (1987).

numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175. *Id.* § 552.117(a)(3). In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold information under section 552.117(a)(3) without the necessity of requesting a decision from this office under the Act. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Thus, the department must withhold the information we have marked in the remaining information submitted by the OGC under section 552.117(a)(3).

The OIG claims section 552.134 of the Government Code for most of its submitted information. Section 552.134 relates to inmates of the Texas Department of Criminal Justice and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The OIG states, and the submitted information reflects, that its submitted information concerns an inmate confined in a facility operated by the Texas Department of Criminal Justice. Thus, we agree portions of the information at issue are subject to section 552.134. We also find none of the information at issue is subject to release under section 552.029 of the Government Code. Therefore, the department must withhold the information we have marked under section 552.134 of the Government Code.<sup>4</sup> The remaining information submitted by the OIG does not pertain to an inmate; therefore, this information may not be withheld under section 552.134 of the Government Code.

We note portions of the remaining information submitted by both the OGC and the OIG contain information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information we have marked in the remaining information pursuant to section 552.130 of the Government Code.

In summary, the department must withhold from the information submitted by the OGC: (1) the submitted I-9 form under section 552.101 in conjunction with section 1324a of title 8 of the United States Code; (2) the submitted W-2 and W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; (3) the information

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

we have marked under section 552.101 in conjunction with common-law privacy; (4) the e-mail address we have marked under section 552.137, unless the owner affirmatively consented to its release; and (5) the personal information we have marked under section 552.117(a)(3). The department must withhold the information we have marked under section 552.134 from the information submitted by the OIG. The department must withhold the Texas motor vehicle record information we have marked from the remaining information submitted by both the OGC and the OIG under section 552.130. 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).

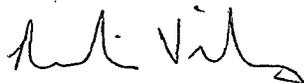
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/eeg

Ref: ID# 326594

Enc. Submitted documents

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(w/o enclosures)