



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2009

Ms. Amy L. Currier  
Public Information Officer  
Texas Funeral Service Commission  
P.O. Box 12217  
Austin, Texas 78711

OR2009-03648

Dear Ms. Currier:

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# 338795 (TFSC Ref. # 01132009).

The Texas Funeral Service Commission (the "commission") received a request for a specified individual's complete personnel file. You state that the commission has released most of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by

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<sup>1</sup>Although your brief purports to assert section 552.024 of the Government Code, this section does not make information confidential. We gather from your arguments that your intent is to assert section 552.117 of the Government Code, which provides for the confidentiality of information that is subject to section 552.024.

section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information.

In this instance, the requestor is the widow of the deceased former employee whose information is at issue. Because the protection afforded by section 552.117 includes "current or former" officials or employees, the protection generally does not lapse at death and the commission ordinarily would be required to withhold this information under section 552.117(a)(1) if the deceased individual timely elected confidentiality, as you state that he did. However, section 552.117 protects personal privacy. Under section 552.023 of the Government Code, a person's authorized representative has a special right of access to private information that would otherwise be excepted from public disclosure. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, we conclude that the commission may not withhold any of the submitted information under section 552.117 of the Government Code.

Although your brief does not raise any additional exceptions to disclosure, we note that you have marked additional information for redaction, apparently pursuant to sections 552.130,<sup>2</sup> 552.136,<sup>3</sup> and 552.137<sup>4</sup> of the Government Code. However, these three sections each protect privacy interests. Because the right to privacy lapses upon death, the commission may not withhold any information that relates solely to a deceased individual under any of these exceptions. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App. — Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Conversely, to the extent that the account numbers you have marked under section 552.136 pertain to accounts in which a living person, other than the requestor, has an interest, the commission must withhold such information. *See* Gov't Code § 552.023.

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<sup>2</sup>Section 552.130 excepts from disclosure Texas driver's license numbers and motor vehicle title or registration information. *See* Gov't Code § 552.130(a)(1), (2).

<sup>3</sup>Section 552.136 excepts from disclosure credit card, debit card, charge card, or access device numbers. *See* Gov't Code § 552.136.

<sup>4</sup>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).

We next note that the submitted information includes the deceased individual's W-4 tax form. Section 552.101 of the Government Code 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 protected by other statutes, including section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b) (defining "return information"); Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Thus, the submitted W-4 is generally confidential under section 552.101 in conjunction with 26 U.S.C. § 6103(a). However, section 6103(e) is an exception to the confidentiality provisions of section 6103(a) that provides for disclosure of tax return information to the taxpayer and certain other persons having a material interest in the information. *See* 26 U.S.C. § 6103(e)(3) (return of decedent shall be disclosed to next of kin with material interest that will be affected by return information); Rev. Rul. 2004-68, 2004-31 I.R.B. 118 (existence of material interest of next of kin as person affected by return information presumed); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under 5 U.S.C. § 552a(d)(1) to federal agency records concerning self). Further, tax return information may be disclosed to any person authorized to receive or inspect a return of the taxpayer, so long as such disclosure would not seriously impair federal tax administration. *See* 26 U.S.C. § 6103(e)(7). The person requesting access to return information under section 6103(e)(3) must provide proof of the following: (1) relationship to the decedent; (2) the date and place of death, and state of decedent's residence; and (3) the material interest that will be affected. Rev. Rul. 2004-68, 2004-31 I.R.B. 118.

In this instance, the requestor states she is the widow of the deceased employee whose tax return information is at issue. Therefore, upon receipt of the required proof, the commission must release the submitted W-4 form to the requestor pursuant to sections 6103(e)(3) and 6103(e)(7), provided that such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-4 is confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

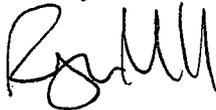
The submitted information also contains an I-9 form. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, the I-9 form is excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

In summary: (1) the commission must withhold the information you have marked under section 552.136 to the extent that a person other than the requestor or the deceased individual owns an interest in the underlying account, (2) upon receipt of the required proof detailed above, the commission must release the submitted tax return information, provided that such disclosure would not seriously impair federal tax administration, (3) the commission must withhold the submitted I-9 form under section 552.101 in conjunction with federal law, and (4) the commission must immediately release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/jb

Ref: ID# 338795

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)