



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 13, 2009

Ms. Elizabeth Y. Brite
Chief Warrant Officer
Texas Military Forces
P.O. Box 5218
Austin, Texas 78763-5218

OR2009-06483

Dear Ms. Brite:

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# 344220.

The Texas Military Forces (the "military") received a request for information pertaining to a named member of the military. We note you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ We understand you to claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Financial information that relates only to an individual

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

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). Thus, a public employee's allocation of part of the employee's salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g.*, ORD 600 at 9-12 (participation in TexFlex), 545 at 3-5 (deferred compensation plan). Likewise, the details of an employee's enrollment in a group insurance program, the designation of the beneficiary of an employee's retirement benefits, and an employee's authorization of direct deposit of the employee's salary are protected by common-law privacy. *See* ORD 600 at 9-12. Upon review, we find portions of the submitted information constitute personal financial information. Furthermore, we find that this information is not of legitimate concern to the public. Therefore, the military must withhold the marked personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) 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 this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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). The military may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the individual at issue timely elected to keep his personal information confidential, the military must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The military may not withhold

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the information we have marked under section 552.117(a)(1) if the individual at issue did not make a timely election to keep his personal information confidential.³

In summary, the military must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual at issue timely elected confidentiality, then the military must withhold the personal information we have marked pursuant to section 552.117(a)(1) of the Government Code. The remaining information must be released 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, 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 344220

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note the military may withhold the named employee's social security number even if he did not make a timely election pursuant to section 552.147 of the Government Code.