



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

Ms. Cara Leahy White
Taylor, Olson, Adkins, Sralla, Elam
Attorney for Tarrant County Mental Health and Retardation
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-17430

Dear Ms. White:

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# 364159.

Mental Health Mental Retardation of Tarrant County ("MHMRTC"), which you represent, received a request for all documents regarding compensation for MHMRTC's chief operating officer, including contracts, pay stubs for 2009 up to the date of the request, federal income tax forms for 2008, and records regarding additional benefits, as well as MHMRTC's total income and expenses for 2008. You state you will release some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the requestor states in her request that she does not seek social security numbers or personal contact information. Accordingly, any of this information within the

¹ We assume 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.

requested documents is not responsive.² MHMRTC need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed).

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 made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); 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.2d1111 (4th Cir. 1993). Therefore, MHMRTC must withhold the submitted W-2 form we have marked pursuant to section 552.101 of the Government Code in conjunction with federal law.

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101 of the Government Code. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d546, 549-51 (Tex. App.-Austin 1983, writ refused n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), the Texas Supreme Court held that information is protected by common-law privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of a legitimate concern to the public. *See*

² As our ruling on this information is dispositive, we need not address your arguments against disclosure under sections 552.117 and 552.147.

Indus. Found., 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990). We have reviewed the submitted documents and marked the personal financial information that is of no legitimate concern to the public. This marked information is confidential under the doctrine of common-law privacy and must be withheld under section 552.101 of the Government Code. We find, however, that the remaining information pertains to a financial transaction between an individual and a governmental body and is therefore of legitimate public interest. Accordingly, none of the remaining information is confidential under the doctrine of common-law privacy, and it may not be withheld under either section 552.101 or section 552.102 of the Government Code on that basis.

Section 552.136 of the Government Code 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. Therefore, MHMRTC must withhold the bank routing number you have marked under section 552.136 of the Government Code.

In summary, MHMRTC must withhold the W-2 form we have marked under section 552.101 of the Government Code in conjunction with federal law. MHMRTC must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. MHMRTC must withhold the bank routing number you have marked under section 552.136 of the Government Code. The remaining responsive information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 364159

Enc. Submitted documents

c: Requestor
(w/o enclosures)