



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2010.

Mr. Cody L. Cofer  
County Attorney's Office  
Henderson County  
Henderson County Courthouse, Room 100  
Athens, Texas 75751

OR2010-01655

Dear Mr. Cofer:

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# 369224.

The Henderson County Treasurer's Office (the "county") received a request for "all information [regarding a named county employee] and his automatic check deposit and/or bank account information." We understand the county to claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered this exception and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>You have provided us with an Abstract of Judgment and Agreed Final Decree of Divorce that the requestor submitted along with her request. We note that whether the Abstract of Judgment is applicable or enforceable with regards to the submitted information is beyond the scope of our division's authority in issuing open records decisions. See Gov't Code § 552.301(a) (division's authority is limited to determining whether requested information falls within an exception to disclosure). Thus, this ruling is limited to whether the submitted information is excepted from disclosure under the Act.

<sup>2</sup>We assume that 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.

Initially, you state that the county sought clarification from the requestor because the request “may prove infinitely burdensome and require volumes of exceptions.” *See* Gov’t Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You do not inform us whether the county has received a response from the requestor. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 (1990). Moreover, a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). In this case, as you have submitted a responsive, representative sample of information for our review and raised an exception to disclosure for these documents, we consider the county to have made a good faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exception to the submitted information.<sup>3</sup>

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 if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found.*, 540 S.W.2d 668, 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *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 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked constitutes

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<sup>3</sup>In this instance, the county received the request for information on November 9, 2009, but did not submit the representative sample of the requested information for our review until December 12, 2009. However, we need not determine whether the county violated its deadlines under section 552.301 in seeking a ruling from this office because this ruling only addresses mandatory exceptions to disclosure, which can constitute compelling reasons to overcome the presumption of openness that arises when a governmental body fails to comply with its statutory deadlines under section 552.301. *See* Gov’t Code §§ 552.301, 552.302; *see also* Open Records Decision No. 663 (1999) at 5 (procedural deadlines under section 552.301 of the Government Code tolled during clarification process, but resume upon receipt of clarification or narrowing response).

personal financial information. We also find that this information is not of legitimate public concern. Thus, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup>

Section 552.117(a)(1) excepts from disclosure the 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. 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). We have marked personal information pertaining to the employee at issue that is subject to section 552.117(a)(1). Accordingly, to the extent the employee timely elected confidentiality for his personal information under section 552.024, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code.<sup>5</sup>

However, we note that the employee at issue may be a peace officer.<sup>6</sup> Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(2). Thus, if the employee at issue is a peace officer, the county must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a driver's license or permit issued by a Texas agency is excepted from public release. *See id.* § 552.130(a). The county must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.<sup>7</sup>

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that

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<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a direct deposit authorization form under section 552.101 in conjunction with common-law privacy, without the necessity of requesting an attorney general decision.

<sup>5</sup>The Office of the Attorney General will raise mandatory exceptions like section 552.117, 552.130, and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>6</sup>Section 552.117(a)(2) applies to a "peace officer" as defined by article 2.12 of the Code of Criminal Procedure.

<sup>7</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see also* § 552.136(a) (definition of “access device number” includes account numbers). The county must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.<sup>8</sup>

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employee at issue made a timely election for confidentiality under section 552.024 of the Government Code; however to the extent the employee is employed as a peace officer with the county, this information must be withheld under section 552.117(a)(2) regardless of whether an election was made. The county must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining 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](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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

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<sup>8</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 369224

Enc. Submitted documents

c: Requestor  
(w/o enclosures)