



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2010

Mr. Reg Hargrove  
Assistant Attorney General  
Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2010-02395

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 370416 (PIR No. 09-26665).

The Office of the Attorney General (the "OAG") received a request for Lance Kutnick's personnel file. The OAG asserts some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have 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 6103(a) of title 26 of the United States Code provides tax return information is confidential. 26 U.S.C. § 6103(a)(2), (b)(2)(A); *see* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Therefore, the OAG must withhold the W-4 form.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. 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 submitted information shows the employee at issue timely elected to keep his personal information confidential. Thus, the OAG must withhold the information it marked under section 552.117(a)(1), including a personal cellular phone number because the OAG states it does not pay for the employee's cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular phone numbers paid for by governmental body and intended for official use).

Section 552.130 of the Government Code excepts from public disclosure information relating to a Texas driver's license. Gov't Code § 552.130. The OAG states it withheld a Texas driver's license number that is excepted from public disclosure under section 552.130 pursuant to Open Records Letter No. 2004-8460 (2004). *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). We have marked other Texas motor vehicle record information the OAG must withhold under section 552.130.

The OAG asserts the private e-mail address it marked is excepted from disclosure under section 552.137 of the Governmental Code. Section 552.137 provides an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure. Gov't Code § 552.137(a). However, a private e-mail address may be disclosed if the member of the public affirmatively consents to its release. *Id.* § 552.137(b). Here, the OAG states the individual at issue has not consented to the release of his e-mail address. Thus, the OAG must withhold the private e-mail address it marked under section 552.137.

In summary, the OAG must withhold the employee's personal information it marked under section 552.117(a)(1), the Texas motor vehicle record information we marked under section 552.130, the private e-mail address it marked under section 552.137, and the W-4 form under federal law.<sup>1</sup> The OAG must release the remainder.

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.

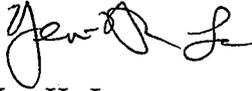
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php).

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<sup>1</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 W-4 forms under section 6103(a) of title 26 of the United States Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" being the most prominent.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 370416

Enc: Marked documents

c: Requestor  
(w/o enclosures)