



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 18, 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

OR2010-02478

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# 370512 (PIR No. 09-26686).

The Office of the Attorney General (the "OAG") received a request for the personnel files of Barry McBee, Edward Burbach, and Dean Stringer. The OAG has released some information but asserts the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted information.

First, we note the OAG redacted some information from a document contained in Mr. Burbach's personnel file. The OAG has not explained why it redacted this information. See Gov't Code § 552.301. Because this information is responsive to the request for Mr. Burbach's personnel file and the OAG has not asserted an exception to withhold this information, the OAG must release the information.¹

¹We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 forms.

An Employment Eligibility Verification, Form I-9, is governed by title 8, section 1324a of the United States Code, which provides the form "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. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, these forms and their attachments are confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the CHRI generated by TCIC and NCIC the OAG must withhold under section 552.101 in conjunction with section 411.083.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found personal financial information not relating to the 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) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* The information includes an employee's personal financial information that does not relate to a financial transaction with a governmental body. We have marked this private information the OAG must withhold.

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. 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 employees at issue timely elected to keep their personal information confidential. Thus, the OAG must withhold the information we marked and most of the information it marked under section 552.117(a)(1). However, the OAG must release the information we marked that is not excepted from public disclosure by section 552.117(a)(1).

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 some Texas motor vehicle record information 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). The OAG marked additional Texas motor vehicle record information that we agree the OAG must withhold under section 552.130.

In summary, the OAG must withhold the W-4 and I-9 forms and their attachments under federal law.² The OAG must withhold the CHRI under section 411.083 of the Government Code and the personal financial information we marked under common-law privacy. Furthermore, the OAG must withhold the Texas motor vehicle record information it marked under section 552.130 and the former employees' personal information under section 552.117(a)(1). 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.

²We 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 Form I-9 and attachments under section 1324a of title 8 of the United States Code, without the necessity of requesting an attorney general decision.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 370512

Enc: Marked documents

c: Requestor
(w/o enclosures)