



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2010

Ms. Lisa Calem-Lindström  
Public Information Coordinator/Legal Assistant  
Texas Facilities Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR2010-06210

Dear Ms. Calem-Lindström:

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# 377520.

The Texas Facilities Commission (the "commission") received two requests from the same requestor. The first request was for certified payroll reports for each of seven named subcontractors that are named in a complaint filed on a specified date.<sup>1</sup> The second request was for the payroll reports of Titus Electric. You state you do not maintain copies of certified payroll reports for Victoria Air and that you have not received a copy of the certified payroll reports for Commercial Insulation as of the date of the request.<sup>2</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions 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 section 6103(a) of title 26 of the United States Code. 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); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's

---

<sup>1</sup>The named contractors are: GnR Electric; BG Metals; Titus Electric; Commercial Insulation; Victoria Air; Calvins Electric; and Aspen Air.

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.2d 1111 (4th Cir. 1993). Although you raise section 6103(a), the submitted information consists of payroll reports that reference federal tax withholdings, exemptions, and marital status. You do not explain how the submitted payroll information you have marked constitutes “return information” as defined in section 6103(b). Accordingly, we find you have failed to establish that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. Therefore, no portion of the submitted information may be withheld on this basis.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. This office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for 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). You state the information at issue was obtained in connection with prevailing wage complaints being investigated by the commission. You acknowledge that this information generally concerns the expenditure of public funds and is of legitimate public interest. However, you assert that portions of the submitted information consist of personal financial information that is confidential under common-law privacy. Based on your representations and our review, we find that the information we have marked constitutes personal financial information and is therefore highly intimate or embarrassing and not of legitimate public concern. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked is not highly intimate or embarrassing and of no legitimate concern to the public. Therefore, no portion of the remaining information is confidential under common-law privacy and it may not be withheld under section 552.101.

Section 552.147 of the Government Code states that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Thus, the

commission may withhold the social security numbers and partial social security numbers you have marked, in addition to the numbers we have marked, under section 552.147 of the Government Code.<sup>3</sup>

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission may withhold the social security numbers and partial social security numbers you have marked, in addition to the numbers we have marked, under section 552.147 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 377520

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

---

<sup>3</sup>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 under the Act. Gov't Code § 552.147(b).