



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2010

Ms. Susan Camp-Lee
Counsel to the City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2010-09128

Dear Ms. Camp-Lee:

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# 383537.

The City of Round Rock (the "city"), which you represent, received a request for the job applications and personnel files of five named individuals. You state the city has released some of the requested information. You state you have redacted portions of the requested information under section 552.117 pursuant to section 552.024(c)(2) of the Government Code.¹ You also state you have redacted certain information pursuant to Open Records Decision No. 684 (2009).² You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that

¹Section 552.024(c)(2) of the Government Code allows a governmental body to redact certain personal information pertaining to employees who properly elected to keep their information confidential without the necessity of requesting a ruling from this office. *See* Gov't Code § 552.024(c)(2).

²This office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

an interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by federal law. This office has 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 No. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of his income[.]" *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). Upon review, we agree the city must withhold the W-4 forms in Exhibit C under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.³

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information 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 legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (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 agree most of Exhibit D consists of personal financial information subject to common-law privacy. However, we find the remaining information, which we have marked for release, is not highly intimate or embarrassing or is of legitimate public interest. Accordingly, except for the information we have marked for release, the city must withhold Exhibit D under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

³We note Open Records Decision No. 684 authorizes a governmental body to withhold W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code without the necessity of requesting an attorney general decision.

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the city must withhold the Texas driver's license information we have marked in Exhibit E under section 552.130 of the Government Code.

In summary, the city must withhold (1) Exhibit C under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, (2) Exhibit D under section 552.101 in conjunction with common-law privacy, apart from the information we have marked for release, and (3) the information we have marked under section 552.130 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, 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 383537

Enc. Submitted documents

c: Requestor
(w/o enclosures)