



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2010

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

OR2010-09198

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# 383752.

The City of Round Rock (the "city"), which you represent, received a request for information pertaining to a named individual and a specified job position. You state the city has released some information to the requestor. You state you have redacted home telephone numbers, home addresses, social security numbers, and family member information subject to section 552.117 of the Government Code under section 552.024 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. The submitted documents include a W-4 form. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code. This office has held that section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of . . . 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

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<sup>1</sup>See Gov't Code § 552.024(c)(2) (if employee or official or former employee or official chooses not to allow public access to his or her personal information, the governmental body may redact the information without the necessity of requesting a decision from this office).

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). Consequently, the city must withhold the submitted W-4 form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses information protected by common-law privacy. Common-law privacy protects information that (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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683. 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 (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 pertains to personal financial decisions not relating to a financial transaction between an individual and a governmental body. Thus, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information pertains to personal financial decisions not relating to a financial transaction between an individual and a governmental body. Accordingly, none of the remaining information is confidential under the doctrine of common-law privacy, and it may not be withheld under either section 552.101 or section 552.102 of the Government Code on that basis.

We note the remaining information contains an insurance group number. Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>2</sup> Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money,

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the city must withhold the insurance group number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>3</sup> The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the insurance group number we have marked under section 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 383752

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</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 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, without the necessity of requesting an attorney general decision.