



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 24, 2010

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

OR2010-09340

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# 384031.

The City of Round Rock (the "city"), which you represent, received a request for the personnel files of two named employees. You state you have redacted Texas driver's license numbers under section 552.130 of the Government Code and e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> As permitted by section 552.024(c) of the Government Code, you also redacted information subject to section 552.117 of the Government Code.<sup>2</sup> You state you have released some information to the requestor. You claim that portions of the remaining information are exempted 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.

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<sup>1</sup>This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of 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.

<sup>2</sup>Section 552.117 of the Government Code exempts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. See Gov't Code §§ 552.117, .024(c).

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 W-4 forms. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code. This office has held that 26 U.S.C. 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 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 forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>3</sup>

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). This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is intimate or embarrassing and of no legitimate public concern. Thus, the city must withhold the information we have marked under

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<sup>3</sup>We note ORD 684 also authorizes governmental bodies to withhold 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.

section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is intimate or embarrassing and of no legitimate public concern. Accordingly, none of the remaining information is confidential under the doctrine of common-law privacy, and it may not be withheld under section 552.101 of the Government Code on that basis.

You claim some of the remaining information, which you have marked in yellow, is confidential under section 552.130, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. We have marked additional information that must be withheld under section 552.130 of the Government Code.

In summary, the city must withhold the 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. 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 Texas motor vehicle record information you have marked in yellow in addition to 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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 384031

Enc. Submitted documents

c: Requestor  
(w/o enclosures)