



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2010

Ms. Elizabeth J. Ossenfort
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2010-11747

Dear Ms. Ossenfort:

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# 389188 (TWC Tracking Number 100519-019).

The Texas Workforce Commission (the "commission") received a request for wage and benefit data for a specified commission employee. You state you are withholding an insurance policy number under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim that portions of the remaining information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

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

¹We note this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

²Although you also initially asserted section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code, in subsequent correspondence with our office, we understand you to have withdrawn your argument that some of the submitted information is excepted from public disclosure on that basis.

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled the test to be applied to information protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we will consider your privacy claims under both sections 552.101 and 552.102.

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.*, 540 S.W.2d at 685. This office has determined financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *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), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). This office has determined a public employee’s net salary is protected by common-law privacy. *See* Attorney General Opinion GA-0572 at 4 (2007) (stating net salary necessarily involves disclosure of information about personal financial decisions). On the other hand, a public employee’s gross salary is a matter of legitimate public interest and is therefore not protected by common-law privacy. *Id.*; *see also* Gov’t Code § 552.022(a)(2); Open Records Decision Nos. 602 at 5, 342 at 3. Upon review, we agree that portions of the submitted information constitute personal financial information. Thus, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102(a). However, you have failed to demonstrate how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of this information is confidential under section 552.101 or section 552.102(a), and it may not be withheld on that basis.

You also assert portions of the remaining information are excepted from disclosure under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find that no portion of the remaining information at issue falls within the zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the commission may not withhold this information under section 552.101 in conjunction with constitutional privacy.

You state the commission will withhold some of the remaining information under section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.³ We note an additional portion of the remaining information is subject to section 552.117(a)(1), which excepts from public disclosure the present and former home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who timely requests that such information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). The commission may only withhold information under section 552.117(a)(1) on behalf of an employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. You state the employee whose information is at issue timely elected confidentiality for certain personal information under section 552.024. Thus, the commission must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code.

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 and section 552.102(a). The commission must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The remaining information must be released.

³We note section 552.024(c)(2) provides that 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. *See* Gov't Code § 552.024(c)(2).

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 389188

Enc. Submitted documents

c: Requestor
(w/o enclosures)