



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2010

Ms. Jenny Gravley
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-12042

Dear Ms. Gravley:

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# 389877.

The City of Southlake (the "city"), which you represent, received a request for a named former employee's personnel file and any investigations pertaining to the named former employee. You indicate the city has released some information to the requestor but has withheld insurance policy numbers, W-2 and W-4 forms, direct deposit authorization forms, Texas driver's license numbers, copies of Texas driver's licenses, Texas license plate numbers, and bank account and routing numbers pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ You claim marked portions of the submitted documents are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 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 1324a of title 8 of the United States

¹This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; W-2 and W-4 forms under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a); a Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code; and insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Code. This section provides that an Employment Eligibility Verification I-9 Form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). You have marked an I-9 form in the submitted documents. Release of this form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we find the I-9 form you marked is confidential under section 1324a of title 8 of the United States Code and must only be released in compliance with the federal laws and regulations governing the employment verification system.²

You also assert marked portions of the submitted documents are confidential under sections 552.101 and 552.102 of the Government Code. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.— Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will, therefore, consider the applicability of common-law privacy under section 552.101 together with your claim under section 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. 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. We note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). Some of the information you seek to withhold under common-law privacy pertains directly to the work conduct and the reasons for dismissal of the former city employee. Accordingly, this information is of legitimate public interest and may not be withheld under common-law privacy.

This office has also found the public has a legitimate interest in facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision

²We note Open Records Decision No. 684 also authorizes governmental bodies to withhold an I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code without the necessity of requesting an attorney general decision

No. 545 (1990) at 4 (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). For example, this office has stated there is a legitimate public interest in an employee's participation in an insurance or retirement program funded in whole or in part by a governmental body. *See* Open Records Decision No. 600 (1992) at 9-12 (identifying public and private portions of certain state personnel records). Accordingly, records relating to such programs do not constitute confidential personal financial information and may not be withheld in their entirety under common-law privacy. However, some of the information contained in these records reflects specific financial decisions made by the former employee, in which the public has no legitimate interest. We marked the information that reflects personal financial decisions made by the former employee and which must be withheld under common-law privacy.³ *See* Open Records Decision Nos. 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

You seek to withhold personal information of the former employee under section 552.117 of the Government Code. Section 552.117(a)(1) 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. Additionally, section 552.117 encompasses personal cellular telephone or pager numbers, provided the service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular telephone or pager number of employee who elects to withhold home telephone number in accordance with section 552.024). 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 city 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 assert, and have provided documentation showing, the employee at issue timely elected confidentiality for his personal information under section 552.024. Accordingly, the city must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1).

You claim some of the remaining information is subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We note section 552.130 does not make

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information regarding the state of issuance confidential because, in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the State of Texas. Accordingly, the city must withhold the information we marked under section 552.130.

Finally, you have marked an e-mail address under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address you marked is not specifically excluded by section 552.137(c). Therefore, unless the individual at issue consents to release of his e-mail address, the city must withhold the e-mail address you marked under section 552.137.

In summary, the I-9 form you marked is confidential under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and must only be released in compliance with the federal laws and regulations governing the employment verification system. The city must withhold the information we marked under common-law privacy. The city must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code. The city must withhold the information we marked under section 552.130 of the Government Code. The city must withhold the e-mail address you marked under section 552.137 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 389877

Enc. Submitted documents

c: Requestor
(w/o enclosures)