



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2011

Ms. Sherri Bryce Dye
Assistant Criminal District Attorney—Civil Section
Bexar County District Attorney's Office
300 Dolorosa, 5th Floor
San Antonio, Texas 78205

OR2011-07922

Dear Ms. Dye:

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# 419946.

The Bexar County Auditor's Office (the "county") received a request for all employment records pertaining to a named deceased employee of Bexar County, including application forms and supporting documentation, background checks, and information pertaining to his termination or resignation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of 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 Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

¹Although you also raise section 552.1175 of the Government Code, section 552.117 is the proper exception to raise for information the county holds in its capacity as an employer. Further, although you did not raise section 552.102 until the fifteen business-day deadline, because this section is a mandatory exception, we will address the applicability of your argument. *See* Gov't Code §§ 552.301(b), .302.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. We note, however, the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (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 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, we note that privacy is a personal right that lapses at death, and, thus, common-law privacy is not applicable to information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

The submitted information primarily pertains to the deceased employee named in the request and includes information pertaining to the employee's life insurance. Generally, we find that the decision to obtain life insurance is a private, financial decision that is excepted from disclosure under common-law privacy pursuant to section 552.101. In this instance, however, we note the information pertains to an insured party who is deceased. As previously noted, the right to privacy lapses at death. See *Moore* 589 S.W.2d at 491. Thus, that individual's right to privacy has lapsed, and the information relating to him may not be withheld on that basis. However, the beneficiaries of an insurance policy have a separate right to privacy. Therefore, information that would reveal a beneficiary's identity is protected by common-law privacy. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the county must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining submitted information may be withheld under section 552.101 on the basis of common-law privacy.

We note the submitted information includes the deceased employee's W-4 tax form. Section 552.101 encompasses information protected by other statutes, including section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. See 26 U.S.C. § 6103(a); see also *id.* § 6103(b) (defining "return information"); Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 form). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions,

exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense [.]” 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). Thus, the submitted W-4 form, which we have marked, constitutes tax return information that is confidential under federal law and must be withheld under section 552.101.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such 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). Accordingly, we conclude the I-9 form we have marked is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system. *See* 8 U.S.C. § 1324a(b)(1)(B)-(D); 8 C.F.R. § 274a.2(b)(1)(v)(A)-(C).

You claim portions of the remaining information are excepted from disclosure under section 552.102 of the Government Code. 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). However, we note section 552.102(a) protects the privacy interests of individuals, and the right the privacy lapses at death. *See Moore*, 587 S.W.2d at 491. Upon review, we find none of the remaining information is excepted under section 552.102(a) of the Government Code, and none of the remaining information may be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. The submitted information pertains to a former county peace officer that is deceased. Because the protection afforded by section 552.117 includes “current or former” officials or employees, the protection generally does not lapse at death, as it is also intended to protect the privacy of the employee’s family members. However, because the protection of social security numbers under section 552.117 is intended to solely protect the privacy of the employee, it lapses at death. *See Moore*, 589 S.W.2d at 489; *see also* Attorney General Opinions JM-229; H-917. Accordingly, with the exception of the deceased employee’s social security number, which must be released, you must withhold the deceased employee’s home addresses,

telephone numbers, and information that reveals whether this employee has family members, which we have marked, under section 552.117(a)(2).

In summary, the county must withhold the following under section 552.101 of the Government Code: (1) the information we have marked in conjunction with common-law privacy; (2) the W-4 form we have marked in conjunction with section 6103(a) of title 26 of the United States Code, and (3) the marked I-9 form in conjunction with section 1324a of title 8 of the United States Code.³ The county must withhold the information we have marked under section 552.117(a)(2) 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/bs

Ref: ID# 419946

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.