



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2011-09677

Dear Ms. Quinn:

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# 423066 (Cedar Park Reference No. 11-495).

The Cedar Park Police Department (the "department") received a request for the arrest report related to a specified case involving the requestor's son. You state the department will release most of the responsive information to the requestor. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the remaining requested information is excepted 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.

Initially, we must address the department's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten

¹Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b). However, section 552.147 protects personal privacy, and in this instance, the requestor is acting as her son's personal representative. Thus, she has a right of access to her son's social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

business days after receiving the request. *See* Gov't Code § 552.301(b). You state the department received the request for information on April 14, 2011. Thus, the department was required to request a decision from this office and state the exceptions that apply by April 28, 2011. The department's request for a ruling is postmarked on April 29, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the department failed to comply with the requirements of section 552.301(b) of the Government Code in requesting this ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). The department seeks to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the department's assertion of the informer's privilege does not provide a compelling reason sufficient to overcome the presumption of openness under section 552.302, and the department may not withhold any portion of the submitted information on that basis. However, because the department's remaining claims under section 552.101 and its claim under section 552.130 can provide compelling reasons to withhold information, we will consider their applicability to 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 6103(a) of title 26 of the United States Code, which makes 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 his 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).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for the disclosure of tax information to the taxpayer or the taxpayer's designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(I) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). The submitted information contains a W-4 form pertaining to the requestor's son. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the department must release to this requestor her son's W-4 form, marked as Exhibit E, if the requestor is her son's designee and the Secretary of the Treasury determines disclosure would not seriously impair federal tax administration. Otherwise, the W-4 form marked as Exhibit E is confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code, which pertains to I-9 Employment Eligibility Verification forms and the attachments. Section 1324a provides that 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). In this instance, release of the I-9 form and its attachment, marked as Exhibit D, would be "for purposes other than for enforcement" of the referenced federal laws. Therefore, the I-9 form and the attachment, marked as Exhibit D, are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

You also raise section 552.101 of the Government Code in conjunction with article 56.09 of the Code of Criminal Procedure. Article 56.09 provides, "[a]s far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be a part of the court file." Crim. Proc. Code art. 56.09. We note, however, the language of article 56.09 simply limits the information to be placed in the court's file. *See id.* The statute does not make information confidential or restrict access to the information in any location other than a court file. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure); 478 at 2 (1987) (statutory confidentiality under statutory predecessor to section 552.101 required express language making certain information confidential or stating that information shall not be released to public).* Therefore, you have not established, and it is not otherwise apparent to this office, how article 56.09 of the Code of Criminal Procedure makes any of the information you seek to withhold confidential. We therefore conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with article 56.09 of the Code of Criminal Procedure.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 established. *Id.* at 681–82. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked consists of highly intimate and embarrassing information that is of no legitimate concern to the public. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the department has redacted information under section 552.130 of the Government Code, which you claim is subject to the previous determination issued by this office in Open Records Decision No. 684 (2009). Section 552.130 of the Government Code exempts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Open Records Decision No. 684 authorizes a governmental body to withhold ten categories of information, including a Texas driver's license number and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. We note that Open Records Decision No. 684 does not permit a governmental body to withhold a vehicle identification number or a license plate year without requesting a ruling from our office. We also note that section 552.130 protects personal privacy, and the requestor in this instance is acting as her son's personal representative. Accordingly, the requestor has a right of access to her son's driver's license number under section 552.023 of the Government Code, and the department may not redact it in this instance. *See id.* § 552.023(b). Upon review, however, we agree the department must withhold the license plate numbers you have redacted. In addition, we find the department must withhold the information we have marked under section 552.130 of the Government Code.

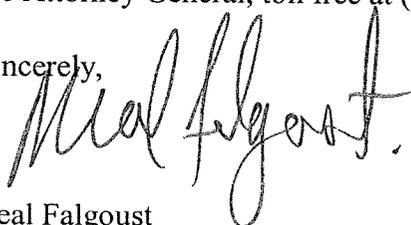
In summary, the department must withhold the W-4 form marked as Exhibit E under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code, unless the requestor is acting as her son's designee and the Secretary of the Treasury determines disclosure would not seriously impair federal tax administration. The department must withhold the I-9 form and its attachments, marked as Exhibit D, under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the

United States Code.² The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 423066

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note Open Records Decision No. 684 also authorizes a governmental body to withhold an I-9 form and its attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code without requesting a decision from our office.

³We note the requestor has a special right of access to some of the information being released. Therefore, if the department receives another request from a different requestor for the same information, it must generally seek a ruling from this office. However, pursuant to Open Records Decision No. 684, the department is authorized to withhold from a different requestor this requestor's son's driver's license number under section 552.130 of the Government Code without requesting a decision from this office. Further, pursuant to section 552.147(b) of the Government Code, the department is authorized to withhold the same individual's social security number, without the necessity of requesting a decision from this office.