



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2011

Ms. Heather Stebbins  
Assistant City Attorney  
City of Kerrville  
800 Junction Highway  
Kerrville, Texas 78028

OR2011-10661

Dear Ms. Stebbins:

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# 424843.

The Kerrville Police Department (the "department") received three requests from the same requestor seeking the personnel files for three named department officers. We understand the department will release the responsive information that has not been submitted for our review. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. This section encompasses information other statutes make confidential, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders tax return information confidential. *See, e.g.*, Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) of title 26 of the United States Code defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, . . . 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 . . . the determination of the existence,

or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]” 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). The submitted personnel records contain W-4 forms, which constitute tax return information. Therefore, the department must withhold the submitted 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.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. 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. This office has found an employee’s voluntary financial choices are highly intimate and embarrassing for purposes of common-law privacy. See Open Records Decision Nos. 600 (1992) (personal financial information protected by common-law privacy includes 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). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See ORD 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure); see also Open Records Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 523 (1989). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. See Open Records Decision No. 373 (1983).

Upon review, we have marked the portions of the submitted personnel records that reveal personal financial decisions of the named employees that are of no legitimate public interest. The department must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information either does not reveal personal financial decisions or involves a transaction between the named employees and the department. Thus, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

In summary, the department must withhold the submitted 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 and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> 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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 424843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>Open Records Decision No. 684 (2009) authorizes a governmental body to withhold ten categories of information without the necessity of requesting an attorney general decision, including 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 and direct deposit authorization forms under section 552.101 in conjunction with common-law privacy.