



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2011

Mr. Joe Torres, III
Attorney at Law
For City of Alice
216 North Texas Boulevard, Suite 2
Alice, Texas 78332

OR2011-11170

Dear Mr. Torres:

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# 425833.

The City of Alice (the "city") received two requests for a specified payroll register, a specified financial report, specified reports filed during a certain election cycle, and a specified work order. You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have only submitted the requested payroll register. Thus, to the extent the requested financial report, election cycle reports, and work order existed and were maintained by the city on the date the city received the request, we assume you have released that information. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 protected by other statutes. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code

renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 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, 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[.]" 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). Upon review, we find you have failed to demonstrate the information at issue falls within the definition of "return information" under section 6103(b)(2). Therefore, none of the submitted information is confidential under section 6103(a), and the city may not withhold the information under section 552.101 on that ground.

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 met. *Id.* at 681-82.

The types of information considered intimate and embarrassing in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that financial information that does not relate to a financial transaction between an individual and a governmental body ordinarily satisfies the first requirement of the test for common-law privacy. For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. See Open Records Decision Nos. 545 (1990), 523 (1989); see also Open Records Decision No. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See ORDs 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 at 4 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). A public employee's gross salary is a matter of legitimate public interest and is therefore not protected by common-law privacy. See Attorney General

Opinion GA-0572 at 3-5 (2007); *see also* Gov't Code § 552.022(a)(2); Open Records Decision Nos. 602 at 5 (1992), 342 at 3 (1982). Upon review, we find you have failed to demonstrate any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. This section 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). Upon review, we find none of the submitted information is excepted under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee."¹ *Id.* § 552.102(b). We note, however, the submitted information does not contain a transcript from an institution of higher education that is maintained in the personnel file of a professional public school employee. Accordingly, no portion of the submitted information may be withheld under section 552.102(b). As you raise no other arguments against disclosure, the city must release the submitted information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

¹We note there is no subsection 552.102(b)(1) of the Government Code.

Ref: ID# 425833

Enc. Submitted documents

c: Requestors
(w/o enclosures)