



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2011-12060

Dear Ms Kaiser:

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# 427447 (TWC Tracking No. 110531-047).

The Texas Workforce Commission (the "commission") received a request for all documents pertaining to a specified payday law claim. You state the commission will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You also state the commission will withhold a W-4 form pursuant to Open Records Decision No. 684 (2009).² You further state you are withholding unemployment compensation information pursuant to section 301.085(c) of the Labor Code. *See* Labor Code § 301.085 (stating unemployment compensation information is not public information subject to the Act). You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130,

¹Section 552.147(b) 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 under the Act. *See* Gov't Code § 552.147.

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code without the necessity of requesting an attorney general decision.

and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.³

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which 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), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You inform us the commission received the request for information on May 31, 2011. Thus, the commission's deadline to request a ruling from this office was June 14, 2011. However, you did not request a ruling until June 16, 2011. Consequently, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, orig. proceeding); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, orig. proceeding) (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). The presumption information is public under section 552.302 can be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to withhold information, we will consider whether any of the submitted information is excepted from disclosure under those exceptions.

The commission states the submitted information is payday claim file information. You explain the commission accepts and investigates claims that workers have not received payment for work. Upon receipt of these claims, the commission creates a file, some of which you assert is not subject to public disclosure.

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 exception encompasses information other statutes make confidential, such as section 6103(a) of title 26 of the United States Code. You claim the employer identification number ("EIN") in the submitted information is confidential under section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held

³We 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 those records contain substantially different types of information than that submitted to this office.

section 6103(a) of title 26 of the United States Code renders “tax return information” confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). “Tax return information” is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). 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). We note this office has determined EINs do not fall under the definition of “tax return information.” Accordingly, we find the EIN at issue may not be withheld under section 6103(a) of title 26 of the United States Code in conjunction with section 552.101.

Next, we note the submitted information includes an I-9 form (Employment Eligibility Verification) which is governed by section 1324a of title 8 of the United States Code. This section, which is also encompassed by section 552.101 of the Government Code, 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). Release of the form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we have marked, is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.⁴

You claim a portion of the remaining information is excepted pursuant to section 171.206 of the Tax Code, which is also encompassed by section 552.101 of the Government Code. Section 171.206 provides:

Except as provided by Section 171.207, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the [Comptroller of Public Accounts (the “comptroller”)]; or
- (2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and

⁴As our ruling is dispositive for this information, we do not address your argument under section 552.130 of the Government Code for a portion of this information.

records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

Tax Code § 171.206. This provision protects information that is in the possession of the comptroller. In this instance, the submitted information is in the possession of the commission. You argue the interagency transfer doctrine provides the commission may not release information received from the comptroller that is confidential pursuant to section 171.206. This office has repeatedly held the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. The interagency transfer doctrine is based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. See Open Records Decision. No. 516 (1989). However, in this instance, the comptroller has not established the information at issue is confidential pursuant to section 171.206. Furthermore, you provide no arguments explaining how the information at issue is subject to section 171.206. Consequently, we find the commission may not withhold the information at issue under section 552.101 in conjunction with section 171.206.

Section 552.101 of the Government Code also encompasses information made confidential by the doctrine of common-law privacy, which protects information if the information (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). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 545 at 4 (1990) (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), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). You assert the marked information pertains to individuals' wages and is confidential under common-law privacy. Upon review, we find the wage information we have marked is confidential under common-law privacy and must be withheld under section 552.101. The remaining information you seek to withhold as information pertaining to individuals' wages is not highly intimate or embarrassing information of no legitimate public interest. Thus, the commission may not withhold this remaining information under section 552.101 in conjunction with common-law privacy.

You also claim the home addresses, telephone numbers, and the names and addresses of the spouses of the claimants are confidential under section 552.101 of the Government Code in

conjunction with common-law privacy. 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). Furthermore, we find the names and addresses of spouses of members of the public are not highly intimate or embarrassing information. Therefore, we conclude the commission may not withhold the home addresses, telephone numbers, and names and addresses of spouses at issue under section 552.101 in conjunction with common-law privacy.

You also raise section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010), for the birth dates of claimants. In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) of the Government Code excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller*, 2010WL 4910163, at 10. Accordingly, the dates of birth of private individuals are not excepted from disclosure pursuant to section 552.101 in conjunction with *Texas Comptroller*. Therefore, we conclude the commission may not withhold the birth dates of claimants under section 552.101 on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You claim the EIN, bank account numbers, bank routing numbers, checkbook register number, check numbers, batch identification numbers, item numbers, and dates you have marked are excepted under section 552.136. We note an EIN is not “access device number” for the purposes of section 552.136. The EIN is merely an employer tax identification number. Additionally, check numbers and dates are not access device numbers. You state an employee’s identification number “can be used to access personal financial information[,]” however, you have failed to demonstrate how any of the numbers you marked constitute an employee identification number. Further, you have failed to provide any arguments explaining how the checkbook register number, batch identification numbers, and item numbers you marked are access device numbers. Consequently, the commission must only withhold the bank account numbers and bank routing numbers we have marked under section 552.136. None of the remaining information may be withheld under section 552.136.

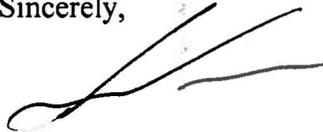
In summary, the I-9 form, which we have marked, is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system. The commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the bank account and bank routing numbers we

have marked under section 552.136 of the Government Code.⁵ 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 427447

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As noted above, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an I-9 from under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and bank account and bank routing numbers under section 552.136 of the Government Code without the necessity of requesting an attorney general decision.