



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2011

Ms. Lona Chastain
Open Records Coordinator
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2011-12971

Dear Ms. Chastain:

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# 429265 (ORR# 110621-013).

The Texas Workforce Commission (the "commission") received a request for information pertaining to a named individual and a specified payday claim investigation file. You inform us some of the requested information includes unemployment compensation records that are not subject to the Act. *See* Act of May 29, 2011, 82nd Leg., R.S., S.B. 563, § 3 (to be codified as an amendment to Lab. Code § 301.085(c)) (unemployment compensation information is not public information for purposes of the Act). You also state the commission "will release to the requestor only those Unemployment Insurance documents which [she] is authorized by federal regulations to receive." You state the commission is withholding bank account and routing numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers pursuant to section 552.147 of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.136 of the

¹Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act); Open Records Decision No. 684 (2009) (previous determination authorizing any governmental body to withhold ten categories of information, including Texas driver's license number under section 552.130 of Government Code and bank account and routing numbers under section 552.136 of the Government Code, without necessity of requesting attorney general opinion).

Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

The commission states that the submitted information is payday claim file information. You explain that 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 section encompasses information protected by other statutes, including section 6103(a) of title 26 of the United States Code. You claim the submitted employer identification numbers are confidential under section 6103(a). Section 6103(a) 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 Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *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 establish the submitted employer identification numbers fall under the definition of tax return information. *See* 26 U.S.C. § 6103(b). Accordingly, we find you have not established the submitted employer identification numbers are confidential under section 6103(a) of title 26 of the United States Code, and, thus, the commission may not withhold them under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses section 171.206 of the Tax Code, which provides the following:

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 [Texas Comptroller of Public Accounts (the “comptroller”)]; or

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

(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 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 also encompasses the doctrine of common-law privacy. Common-law privacy 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). Prior decisions of this office have 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. 600 (1992), 545 (1990), 373 (1983). 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, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). We have marked financial information pertaining to other individuals that the commission must withhold under section 552.101 in conjunction with common-law privacy. The remaining information is not financial information that is confidential under common-law privacy, and the commission may not withhold it under section 552.101 on that ground.

You also claim the home addresses, telephone numbers, and contact information of members of the public in the submitted information are confidential under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the

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 members of the public are not highly intimate or embarrassing information. Therefore, we conclude the commission may not withhold the home addresses, telephone numbers, or contact information of members of the public in the submitted information under section 552.101 in conjunction with common-law privacy.

You also claim some of the remaining information is 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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the comptroller. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Accordingly, the dates of birth of private individuals are not excepted from disclosure pursuant to section 552.101 in conjunction with *Texas Comptroller*. Upon review, we find none of the remaining information is excepted from disclosure under section 552.102(a); therefore, the commission may not withhold any of the remaining information on that basis.

Section 552.136 of the Government Code provides the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding any other provision of this chapter, 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. You assert the submitted employer identification numbers are access devices numbers because "[a] business must have an [employer identification number] to order to pay employees and to file business tax returns" and because an employer identification number "is used by a business to open a bank account." However, upon review we find you have failed to explain how the submitted employer identification numbers

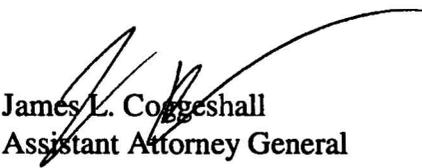
constitute access device numbers for purposes of section 552.136. We also find you have failed to demonstrate the submitted check numbers and money order information constitute access device numbers for purposes of section 552.136. Thus, the commission may not withhold any of the remaining information at issue, which we have marked for release, under section 552.136.

To conclude, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must release the remaining information.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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sdk

Ref: ID# 429265

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the requestor has a special right of access to the information being released, the commission must again seek a decision from this office if it receives another request for the same information from another requestor.