



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

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

OR2011-13236

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# 429891 (TWC Tracking No: 110628-016).

The Texas Workforce Commission (the "commission") received a request for information pertaining to wage claims or investigations regarding a named entity. You state the commission has redacted information that has been released and will redact the submitted information pursuant to Open Records Decision No. 684 (2009) and section 552.147 of the Government Code.¹ You state you are withholding unemployment compensation information pursuant to section 301.085(c) of the Labor Code. *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)). You claim portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. We have

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision. Further, section 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(b).

considered the exceptions you claim and reviewed the submitted representative sample of information.²

The commission states that the information at issue 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 public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that 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 that 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 that this office has determined EINs do not fall under the definition of “tax return information.” Further, you do not direct this office to any statute that otherwise makes the EIN you have marked confidential. 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 of the Government Code.

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 information made confidential by the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 that financial information relating only to an individual ordinarily satisfies the first

²We assume the “representative sample” of information 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 those submitted to this office.

requirement of the test for common-law privacy, but that 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 information pertaining to individuals' wages is confidential under common-law privacy. Upon review, we agree the wage information we have marked is confidential under common-law privacy and must be withheld under section 552.101 of the Government Code.

You also claim the home address, telephone number, and family information of the claimant in the remaining information at issue are confidential under section 552.101 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). Upon review, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude the commission may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). You have failed to demonstrate, however, how any of the remaining information you seek to withhold constitutes a commission employee's date of birth. Consequently, the commission may not withhold any of the remaining information at issue under section 552.102(a) of the Government Code.

Section 552.136 of the Government Code states "[n]otwithstanding 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(b). We note that an EIN is not an access device number for purposes of section 552.136. Further, we note section 552.136 is not applicable to a check number or to information contained in a money order. Upon review, we find none of the remaining information at issue constitutes a credit card, debit card, charge card, or access device number under section 552.136. Therefore, the commission may not withhold any of the remaining information at issue under section 552.136.

In summary, the commission must withhold the wage 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 at issue.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 429891

Enc. Submitted documents

c: Requestor
(w/o enclosures)