



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2011-17611

Dear Ms. DeLuca:

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# 437936.

The City of Bryan (the "city") received a request for the payroll records and W-2 forms of a named city employee for a specified period of time. You state you have withheld the requested W-2 forms as permitted by Open Records Decision No. 684 (2009).<sup>1</sup> You further state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 the common-law right to privacy, which protects information if it (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

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including W-2 forms 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.

demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. This office has found 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) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs are protected under common-law privacy). 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 employee participation in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy).

Upon review, we find the information we have marked constitutes personal financial details that are not of legitimate public interest. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information you seek to withhold is highly intimate or embarrassing and of no legitimate public interest; thus, none of the remaining information you have marked may be withheld on that basis.

We note portions of the remaining information that pertain to certain deductions, which we have marked, are subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)(1)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may withhold information under section 552.117 only on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the employee at issue timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). Conversely, if the employee did not make a timely election under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In the event the employee at issue did not make a timely election under section 552.024 of the Government Code to withhold his information, we will address whether common-law privacy protects the information we have marked. We again note there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 545. Therefore, the city may not withhold information pertaining to deductions made pursuant to a garnishment order. However, we note some of the deductions may be voluntary payments. You have not identified which payments were made pursuant to a garnishment order and which were voluntary deductions. Thus, we must rule conditionally. To the extent the deductions at issue pertain to the garnishment of wages, the city may not withhold this information under common-law privacy, and it must be released. To the extent the deductions at issue are for voluntary payments, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. If the employee at issue timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). If the employee at issue did not timely request confidentiality under section 552.024, and to the extent the marked deductions were voluntary, the city must withhold them under section 552.101 in conjunction with common-law privacy. The remaining information must be released to the requestor.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 437936

Enc. Submitted documents

c: Requestor  
(w/o enclosures)