



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2012

Ms. Donna L. Johnson
For City of Cleveland
Olson & Olson, L.L.P.
For City of Cleveland
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2012-00427

Dear Ms. Johnson:

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# 441902.

The City of Cleveland (the "city"), which you represent, received a request for any and all "contracts, documents, letters, memoranda's, reports[,] etc. between the City of Cleveland[,] Texas and Acute Medical Services, LLC (Harris County EMS)[,] and Jody Meads for the year of 2011." You state you will release some information to the requestor with certain information redacted pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009) and section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.102, 552.110, and 552.117 of the Government Code. You also state

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. *See* Gov't Code § 552.147(b). Open 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. However, on September 1, 2011, the Texas legislature amended section 552.136 of the Government Code to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Gov't Code § 552.136(e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Acute Medical Services of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Acute Medical Services explaining why its submitted information should not be released. Although you argue the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the proprietary interests of third parties, not the interests of a governmental body. Thus, as we have not received any arguments from Acute Medical Services, we have no basis for concluding that any portion of the submitted information is excepted from disclosure under section 552.110. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of section 552.110 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."² 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

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

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). Accordingly, the submitted tax return information, including Form 1065, we have marked is confidential under section 6103(a) of Title 26 of the United States Code, and must be withheld under section 552.101 of the Government Code.

Section 552.102(a) of the Government Code 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. Accordingly, none of the submitted information may be withheld on that basis.

Next, we address your claim under section 552.117 of the Government Code for portions of the remaining information. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2). However, in this case, the peace officer at issue is not employed by the city. Section 552.117 is only applicable to information a governmental body holds in its capacity as an employer. Therefore, the city may not withhold the information at issue under section 552.117 of the Government Code.

We note, however, portions of the remaining information includes information subject to section 552.1175 of the Government Code, which applies to information pertaining to peace officers that the city does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

³Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b).⁴ We note section 552.1175 also excepts from disclosure personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6 (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We have marked information that belongs to a licensed peace officer not employed by the city. The city must only withhold the information we marked if the peace officer elects to restrict access to the information pertaining to him in accordance with section 552.1175(b). If no election is made, the city may not withhold the information we have marked under section 552.1175.

Section 552.136 of the Government Code provides in part that “[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.”⁵ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The submitted information includes bank routing numbers. Accordingly, the city must withhold the bank routing numbers we have marked under section 552.136 of the Government Code.

In summary, the submitted tax return information, including Form 1065, we have marked is confidential under section 6103(a) of Title 26 of the United States Code, and must be withheld under section 552.101 of the Government Code. The city must withhold the information we marked under section 552.1175 of the Government Code, if the peace officer elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The city must withhold the bank routing numbers we have marked under section 552.136 of the Government Code. 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.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 441902

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Acute Medical Services
c/o Mr. John S. Cossum
Law Offices of John S. Cossum
440 Louisiana, Suite 900
Houston, Texas 77002
(w/o enclosures)