



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2012

Ms. Becky Wilkins
Treasurer
Hill County
P.O. Box 671
Hillsboro, Texas 76645

OR2012-06012

Dear Ms. Wilkins:

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# 451836.

The Hill County Treasurer (the "county") received a request for the personnel files of three named individuals and a list of sheriff's office employees on two specified dates. You claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the request for a list of sheriff's office employees on the specified dates. To the extent such information existed on the date the county received the request, we presume the county has released it. If not, the county must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

We understand you to claim the submitted information is excepted from disclosure in its entirety under section 552.102(a) 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). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd

n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a), however, and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Supreme Court then considered the applicability of section 552.102(a) and held it exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. We have marked birth dates the county must withhold under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law 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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally exempted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, this office has found a legitimate public interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 542 at 5 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms).

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of his income[.]” *See* 26 U.S.C. § 6103(b)(2)(A). 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). Upon review, we find the county must withhold the tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides 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). Upon review, we find the county must withhold the I-9 forms we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5–7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). However, a post office box number is not a “home address” for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1999) (legislative history makes clear purpose of section 552.117 is to protect public employees from being harassed at home). We note all of the employees whose information is at issue made timely elections under section 552.024. Accordingly, we find the county must withhold the personal information we have marked under section 552.117(a)(1) of the Government Code. However, the county may not withhold the cellular telephone numbers we have marked under section 552.117(a)(1) if a governmental body paid for the cellular telephone service.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1), (2). Accordingly, the county must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136(b) 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). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the county must withhold the group insurance policy number we have marked under section 552.136 of the Government Code.

Section 552.137 provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). Accordingly, the county must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.

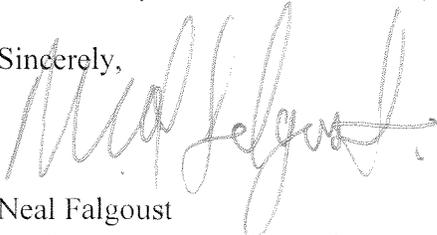
In summary, the county must withhold the dates of birth we have marked under section 552.102 of the Government Code. The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The county must withhold the I-9 forms we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The county must withhold the personal information we have marked under section 552.117(a)(1) of the Government Code; however, it may not withhold the marked cellular telephone numbers if a governmental body paid for the cellular telephone service. The county must withhold the information we have marked under section 552.130 of the Government Code. The county must withhold the group insurance policy number we have marked under section 552.136 of the Government Code. The county must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consented to their release. The remaining information must be released.²

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a direct deposit authorization form under section 552.101 of the Government Code in conjunction with common-law privacy, a form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, W-2 and W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, a copy of a Texas driver’s license under section 552.130 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Additionally, section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 of the Government Code without the necessity of seeking a decision from this office. *See* Gov’t Code § 552.024(c).

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust", written over a light blue horizontal line.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 451836

Enc. Submitted documents

c: Requestor
(w/o enclosures)