



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2012

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

OR2012-20514

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# 474772 (TWC Tracking No. 121008-022).

The Texas Workforce Commission (the "commission") received a request for all documents regarding a specified wage claim, including intake information, appeal documents, and audio tapes of any hearings. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).¹ You claim a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

We first note you have only submitted copies of a portion of a restricted interest agreement. Thus, although you state the commission has submitted a representative sample of information related to the wage complaint, the submitted information is not representative of any responsive intake information, appeal documents, or audio tapes of hearings. This open records letter ruling is applicable only to the types of information you have submitted for our review. *See* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). This

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

ruling does not authorize the commission to withhold any types of information that are substantially different from the types of information the commission has submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Thus, to the extent any responsive intake information, appeal documents, or hearing tapes existed when the commission received the present request, we assume the commission has released any such information. If not, then the commission must do so immediately.² See *id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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. Section 552.101 encompasses information made confidential by the doctrines of common-law and constitutional privacy. Common-law privacy 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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. See Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). You claim the family information of the claimant in the submitted information is confidential under section 552.101 in conjunction with common-law privacy. We note, however, the names 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). Upon review, we find you have failed to demonstrate how any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude the commission may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim the family information of the claimant is confidential under section 552.101 in conjunction with constitutional privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); see also Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); see also

²We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); see also ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for the purposes of constitutional privacy. Consequently, the commission may not withhold any of the submitted information under section 552.101 in conjunction with constitutional privacy. As you raise no further exceptions to disclosure, the submitted 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.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 474772

Enc. Submitted documents

c: Requestor
(w/o enclosures)