



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2013

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
701 Main Street
Kerrville, Texas 78028

OR2013-08978

Dear Ms. Stebbins:

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# 488655.

The City of Kerrville and the Kerrville Police Department (collectively, the "city") each received a request from the same requestor for the personnel file of a named police officer. You claim 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 information.

Initially, we note the requestor has specifically excluded the named police officer's social security number, driver's license number, and home address from her request. Thus, any of this information within the requested documents is not responsive to the request. This ruling does not address the public availability of the information that is not responsive to the request, and the city is not required to release this information in response to this request.

Next, we note you have only submitted a job offer and pre-employment checklist and certain financial documents for our review. To the extent any additional responsive information existed and was maintained by the city on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 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, . . . or offense[.]” *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). Thus, we find the city must withhold the tax return information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* ORD 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). However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984). Upon review, we find the personal financial information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information of no legitimate public interest, and it may not be

withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the tax return information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹ The city must release the remaining information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 488655

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including 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 and direct deposit authorization forms under section 552.101 in conjunction with common-law privacy, without the necessity of requesting an attorney general opinion.