



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2014

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

OR2014-01848

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# 512561 (TWC Tracking No. 131011-004).

The Texas Workforce Commission (the "commission") received a request for wage claim determinations for open enrollment charter schools during the last five years and "accrued wages" determinations during the last two years. You state the commission will withhold certain information pursuant to section 301.085(c) of the Labor Code, section 552.147(b) of the Government Code, and Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government

¹Section 301.085(c) of the Labor Code provides unemployment compensation information and job matching services information are not public information for purposes of the Act. Labor Code § 301.085(c). Section 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 under the Act. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we must address the commission's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The commission received the request for information on October 11, 2013. You state that on October 24, 2013, the commission provided the requestor with a cost estimate pursuant to section 552.2615 of the Government Code and, on October 29, 2013, the requestor complied with section 552.2615 by accepting and paying the charges. *See id.* § 552.2615(a),(b). We note section 552.2615 of the Government Code provides the submission of an estimate of charges to the requestor does not start over or toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) ("The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G [of the Act]."). Thus, the request for information was received on October 11, 2013, and the commission's ten-business-day deadline and fifteen-business-day deadline were, respectively, October 25, 2013, and November 1, 2013. However, the commission's request for a ruling is postmarked November 14, 2013. Further, we did not receive the information required by section 552.301(e) until December 17, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, the commission failed to comply with the procedural requirements mandated by section 552.301.

²We note, although you provide arguments under section 552.101 of the Government Code to withhold dates of birth, you have not submitted any information containing any dates of birth. Accordingly, we need not address your arguments for this information. *See* Gov't Code §§ 552.301, .302.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. See *id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); see also Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your argument under that section.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). You assert the information pertaining to individuals' wages is confidential under common-law privacy. Upon review, we agree the wage information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*, and the commission must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude the commission may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 512561

Enc. Submitted documents

c: Requestor
(w/o enclosures)