



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2014

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

OR2014-10969

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# 527138 (TWC Tracking No. 140404-023).

The Texas Workforce Commission (the "commission") received a request for information pertaining to five specified wage claims. You state the commission will redact 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 exempted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments

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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²We assume 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

submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section 171.206 of the Tax Code, which provides the following:

Except as provided by Section 171.207, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the [Texas Comptroller of Public Accounts (the "comptroller")]; or
- (2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

Tax Code § 171.206. This provision protects information that is in the possession of the comptroller. In this instance, the submitted information is in the possession of the commission. You argue the interagency transfer doctrine provides the commission may not release information received from the comptroller that is confidential pursuant to section 171.206. This office has repeatedly held the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. The interagency transfer doctrine is based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989).

However, in this instance, the comptroller has not established the information at issue is confidential pursuant to section 171.206. Furthermore, you provide no arguments explaining how the information at issue is subject to section 171.206. Consequently, we find the commission may not withhold the information at issue under section 552.101 of the Government Code on the basis of section 171.206 of the Tax Code.

extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also 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 founds 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).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the requestor states he represents the individuals whose information is at issue and, therefore, he may have a right of access to this information. *See* Gov't Code § 552.023(a) ("person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of the individuals whose information is at issue, then he has a right of access to their information pursuant to section 552.023, and the commission may not withhold this information under section 552.101 of the Government Code on the basis of common-law privacy. However, if the requestor is not acting as the authorized representative of the individuals whose information is at issue, then the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find you have failed to demonstrate that any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the commission may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

Section 552.102 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." *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find you have failed to demonstrate section 552.102(a) is applicable to any of the remaining information you seek to withhold.

Accordingly, the commission may not withhold any of the remaining information at issue under section 552.102 of the Government Code.

In summary, if the requestor is acting as the authorized representative of the individuals whose information we have marked, then the commission may not withhold this information under section 552.101 of the Government Code on the basis of common-law privacy. If the requestor is not acting as the authorized representative of the individuals whose information is at issue, then the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Regardless, 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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 527138

Enc. Submitted documents

c: Requestor
(w/o enclosures)