



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2018

Ms. Hadassah Schloss  
Director  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2018-00527

Dear Ms. Schloss:

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# 690603 (GLO ID# 18-0064)

The Texas General Land Office (the "GLO") received a request for payroll records pertaining to a named employee from a specified time period. You state the GLO has released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. Additionally, you state the GLO notified a third party of the request. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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 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 satisfied. *Id.* at 681-82. The 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 personal financial information not relating to the financial transaction between

an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545. We note the payroll deductions for federal withholding tax are protected by common-law privacy and must be withheld under section 552.101, but the payroll deductions for social security, mandatory retirement, and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See, e.g.*, ORDs 600 at 9-12 (participation in TexFlex), 545 at 3-5; *see also* Attorney General Opinion GA-0572 at 4 (2007) (public employee's net salary protected by common-law privacy, but gross salary is not).

Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the GLO must generally withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, it is not clear whether the listed payroll deductions and benefits reflect mandatory participation by the employee or are the employee's voluntary financial decisions. Thus, to the extent the information you marked reflects the employee's voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the GLO, the GLO must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employee's mandatory participation in the GLO's retirement program or benefits paid by the GLO, the deduction amounts are not confidential and may not be withheld on that basis.

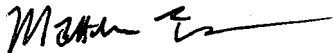
Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state, and provide documentation showing, the employee at issue timely requested confidentiality under section 552.024 of the Government Code. Accordingly, the GLO must withhold the information you marked under section 552.117(a)(1) of the Government Code.

In summary, to the extent the information you marked reflects the employee's voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the GLO, the GLO must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The GLO must withhold the information you marked under section 552.117(a)(1) of the Government Code. The GLO 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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/tdw

Ref: ID# 690603

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)