



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Mr. Calixtro Villarreal  
Counsel for the City of Rio Grande City  
Law Office of Calixtro Villarreal  
205 West Main Street  
Rio Grande City, Texas 78582

OR2020-10806

Dear Mr. Villarreal:

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# 821448.

The City of Rio Grande City (the "city"), which you represent, received a request for the personnel file of a named employee. The city received a second request from a representative of the employee at issue also seeking the employee's personnel file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you have redacted some information in the responsive documents. We understand you have redacted some information from the first requestor under section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>1</sup> We also understand you have redacted an e-mail address from the first requestor subject to section 552.137 of the Government Code pursuant to the previous determination in Open

---

<sup>1</sup> Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. See Gov't Code §§ 552.024(c)(2), .117(a)(1).

Records Decision No. 684 (2009).<sup>2</sup> However, we note you also have redacted a date of birth. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the city has been authorized to withhold dates of birth without seeking a ruling from this office. *Id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); *id.* § 552.302. Thus, in the future, the city should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Section 552.102(a) 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). We note the second requestor has a right of access to her client's date of birth, and the city may not withhold it from her under section 552.102. *See* Gov't Code § 552.023(a) ("a person or a 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"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the city must withhold the employee's date of birth from the first requestor under section 552.102 of the Government Code.<sup>3</sup>

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. This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code, which renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns);

---

<sup>2</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Open Records Decision No. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term “return information” as follows:

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 Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

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), *dismissed in part, aff’d in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Nevertheless, section 6103(e) creates an exception to confidentiality under section 6103(a) and provides for disclosure of tax return information to the taxpayer. *See* 26 U.S.C. § 6103(e)(7) (information may be disclosed to any person authorized by subsection (e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual’s right of access under federal Freedom of Information Act). Thus, the second requestor has a right of access to her client’s return information pursuant to § 6103(e), and it may not be withheld from her under § 6103(a). However, the city must withhold the submitted W-4 forms from the first requestor under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.<sup>4</sup>

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 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 personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has also found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open

---

<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *See* ORDs 600, 523. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the second requestor has a right of access to her client's information at issue, and the city may not withhold it from her on the basis of common-law privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the city must withhold the information we marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

As previously noted, you have marked some information for redaction under section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code. We note the remaining information contains additional information subject to this exception. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note section 552.117 protects personal privacy. Accordingly, the second requestor has a right of access to her client's information under section 552.023 of the Government Code and it may not be withheld from her under section 552.117. *See* Gov't Code § 552.023(a); ORD 481 at 4. You inform us, and provide documentation demonstrating, the employee named in the request timely requested confidentiality under section 552.024 for her home address and telephone number. Accordingly, the city must withhold the named employee's home address and telephone number under section 552.117 of the Government Code from the first requestor. However, we are unable to discern whether the named employee timely requested confidentiality under section 552.024 for her emergency contact information, social security number, and family member information. Accordingly, to the extent the named employee timely requested confidentiality under section 552.024 of the Government Code for her emergency contact information, social security number, and family member information; the city must withhold this information pertaining to the named employee, which the city and we marked, under section 552.117 of the Government Code from the first requestor. Further, to the extent the remaining individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information

pertaining to this individual we marked under section 552.117(a)(1) of the Government Code from both requestors.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform us some of the remaining information relates to an investigation being conducted by the Starr County Sheriff’s Office (the “sheriff’s office”) and a prosecution by the Starr County District Attorney’s Office (the “district attorney’s office”). However, you have not provided a representation from the sheriff’s office or the district attorney’s office, nor has the sheriff’s office or the district attorney’s office provided a representation to this office, stating either agency wishes to withhold the information at issue. Therefore, the city may not withhold any of the information at issue under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the employee’s date of birth from the first requestor under section 552.102 of the Government Code. The city must withhold the submitted W-4 forms from the first requestor under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the information we marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the named employee’s home address and telephone number under section 552.117 of the Government Code from the first requestor. To the extent the named employee timely requested confidentiality under section 552.024 of the Government Code for her emergency contact information, social security number, and family member information; the city must withhold this information pertaining to the named employee, which the city and we marked, under section 552.117 of the Government Code from the first requestor. To the extent the remaining individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information pertaining to this individual we marked under section 552.117(a)(1) of the Government Code from both requestors. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/mo

Ref: ID# 821448

Enc. Submitted documents

c: 2 Requestor  
(w/o enclosures)