



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Ms. Tiffany Bangs  
Assistant County Attorney  
Office of the Harris County Attorney  
1019 Congress Street, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2022-07332

Dear Ms. Bangs:

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# 935295 (File No. 21PIA0995).

The Harris County Precinct 8 Constable's Office (the "constable's office") received a request for information pertaining to a named employee. You claim the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception 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."<sup>1</sup> Gov't Code § 552.101. This exception encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 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 Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of

---

<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, 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, the submitted W-4 form constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.<sup>2</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 generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the constable’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

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.” Gov’t Code § 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). Accordingly, the constable’s office must withhold the employee’s date of birth we have marked under section 552.102(a) of the Government Code.<sup>4</sup>

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). We note, for purposes of

---

<sup>2</sup> As our ruling is dispositive, we need not address your argument against disclosure of this information.

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

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

section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. The constable’s office states, and provides documentation showing, the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Therefore, the constable’s office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Upon review, however, we find the remaining information does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the constable’s office, and the constable’s office may not withhold any portion of the remaining information under section 552.117(a)(1).

Some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information, which we have marked, relates to a peace officer who is employed by another police department. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Accordingly, to the extent the information at issue, which we have marked, consists of information of an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the constable's office must withhold the information we marked under section 552.1175 of the Government Code; however, to the extent the information is a cellular telephone number, it may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is not an individual who is subject to section 552.1175(a) or does not elect to restrict access to his information in accordance with section 552.1175(b), this information may not be withheld under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the constable's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the constable's office must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The constable's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable's office must withhold the employee's date of birth we have marked under section 552.102(a) of the Government Code. The constable's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent the information at issue we marked consists of the information of an individual who is subject to section 552.1175(a) and who elects to restrict access to the information in accordance with section 552.1175(b), the constable's office must withhold the marked information under section 552.1175 of the Government Code; however, to the extent the information is a cellular telephone number, it may only be withheld if a governmental body does not pay for the cellular telephone service. The constable's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.

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,

Colin Henry  
Attorney  
Open Records Division

CEH/jm

Ref: ID# 935295

Enc. Submitted documents

c: Requestor  
(w/o enclosures)