



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 31, 2022

Mr. Matt D. Matzner  
Counsel for Hemphill County  
Crenshaw Dupree & Milam, L.L.P.  
P.O. Box 64479  
Lubbock, Texas 79464-4479

OR2022-15516

Dear Mr. Matzner:

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# 951313 (ORR# 54037.76994).

Hemphill County (the "county"), which you represent, received a request for the employment records of a named employee. The county claims some of the information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.102, 552.130, 552.136, and 525.147 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c). Therefore, to the extent the submitted information contains records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the county is not required to release it in response to the request.

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, including federal law. The submitted information contains a W-4 tax form. Section 6103(a)

of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-4 tax forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the county must withhold the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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 the *Industrial Foundation* decision. *Id.* at 683. This office has found personal financial information not relating to the 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). Upon review, we agree the information that the county has marked under common-law privacy satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the county must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

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. The county must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, section 552.130 is not applicable to the remaining information and the county may not withhold any of it on that ground.

In summary, to the extent the submitted information contains records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the county is not required to release it in response to the request. The county must withhold the following: (1) the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (2) the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the information we have marked under section 552.130 of the Government Code. The county 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.

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<sup>1</sup> As our ruling is dispositive, we do not address the other arguments of the county to withhold this information.

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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/mo

Ref: ID# 951313

Enc. Submitted documents

c: Requestor  
(w/o enclosures)