



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 29, 2022

Mr. Brandon D. Morris  
Counsel for the City of Angleton  
Randle Law Office Ltd., L.L.P.  
820 Gessner, Suite 1570  
Houston, Texas 77024-4494

OR2022-26259

Dear Mr. Morris:

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# 968863.

The City of Angleton (the "city"), which you represent, received a request for all personnel files concerning a named individual. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. 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." Gov't Code § 552.101. Section 552.101 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 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). [As noted above, section 6103(a), as a federal law, preempts any conflicting state provisions, including section 22.082 of the Education Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp. at 382 (E.D. Tex. 1995).] 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>1</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 city must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code.<sup>2</sup>

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). We note, for purposes of 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)). 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). You state the individual at issue timely requested confidentiality under section 552.024 of the Government Code. Therefore, with the exception of the information we have marked for release, the city must withhold the information you marked and the additional 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.<sup>3</sup> However, upon review, 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 city, and the city may not withhold the remaining information it marked under section 552.117(a)(1).

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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

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

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 also 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 found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 523 (1989). Upon review, we agree some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</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. Accordingly, the city must withhold the motor vehicle record information you marked and the additional information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure.

In summary, the city 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 city must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code. With the exception of the information we have marked for release the city must withhold the information you marked and the additional 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

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

cellular telephone service. The city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you marked, and the additional information we have marked, under section 552.130 of the Government Code. The city must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure. 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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/jxd

Ref: ID# 968863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)