



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 29, 1994

Mr. Donald G. Vandiver  
First Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR94-509

Dear Mr. Vandiver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24982.

The City of Lubbock received an open records request in which the requestor seeks to inspect the personnel files of certain city officers and employees. Because the files contain both public documents and documents that are entirely or partly confidential, you contend that the requestor may not have access to the requested records, but must pay for copies. You also contend that some of the requested information is excepted from required public disclosure by sections 552.117 and 552.101.

You have sent the personnel file of one employee as a representative sample<sup>1</sup> of the requested records. You state that the files contain both public and confidential information and argue that, for this reason, the requestor may not have access to any of the information but rather must pay for copies of all of the information. We disagree. The amount that may be charged for providing access to or copies of documents under the Open Records Act is governed by subchapter F of chapter 552 of the Government

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code. This subchapter does not permit a governmental body to charge for providing access to documents in standard-size form. *Compare* Gov't Code § 552.262 with Gov't Code § 552.261. If giving a requestor actual physical access to document would reveal confidential information, the governmental body may require the requestor to purchase a copy of the document. However, the governmental body may not require the requestor to purchase copies of documents that do not contain confidential information. The documents you presented to us for review are standard-size. Therefore, you may require the requestor to purchase copies of only those documents containing information that must be redacted, and you must permit the requestor to examine those documents that must be released in their entirety.

We will next address your argument that section 552.117 excepts from disclosure portions of the information you submitted for review. In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Section 552.117 requires you to withhold any home address or telephone number of an official or employee who requested that this information be kept confidential under section 552.024. You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. In the representative file that you have submitted, the employee has filed a form indicating his intention to withhold his home address and telephone number from public access. That document creates the necessity of redacting that information from other documents. *See* Gov't Code § 552.024.

You also contend that section 552.101 excepts portions of the requested information from required public disclosure. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section applies to information made confidential by a specific statute and to information made confidential by common-law privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (information about injuries to intimate body parts protected from disclosure by concepts of constitutional and common-law privacy); Open Records Decision No. 584 (1991) (information concerning welfare recipients made confidential by the Texas Human Resources Code). We conclude that both statutes and common-law privacy prevent you from disclosing some of the information you presented for review.

You indicate that you are aware of Open Records Decision No. 622 (1994), which examined the possible statutory confidentiality of social security numbers. You are correct when you indicate that "[i]t will be necessary to make a determination on each type of usage whether it is required to be collected or reported by a law enacted prior to

October 1, 1990, so as to avoid a violation of federal and state law." A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622. We note, however, that hiring an individual after October 1, 1990, is not the same as obtaining an individual's social security number pursuant to a law enacted on or after October 1, 1990. For example, an employer is required to obtain a new employee's social security number for tax purposes under a law that predates October 1, 1990, and thus, a social security number obtained under this law is not made confidential by the 1990 amendments to the Social Security Act. Based on the information that you have provided, we are unable to determine whether the social security numbers at issue here are confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number contained in these documents, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.

Another statutory confidentiality provision, the Medical Practice Act, makes confidential "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The physical examination record in this representative file was prepared by a physician and is made confidential by that provision. Open Records Decision Nos. 600 (1992); 455 (1987).

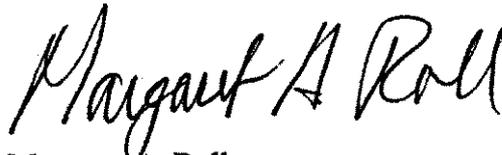
Finally, common-law privacy under section 552.101 protects certain financial information relating to an individual. To be protected by common-law privacy, information must be highly intimate or embarrassing and of no legitimate concern to the public. *Industrial Found.* 540 S.W.2d at 685. Financial information relating to an individual normally satisfies the first prong of this test. However, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision No. 600 (1992) at 9. On the other hand, if a public employee allocates some of his or her salary to a voluntary investment or other benefit program to which the governmental body makes no contribution, that decision is a personal financial decision and is not of any legitimate concern to the public. *Id.*; Open Records Decision No. 545 (1990).

Under this standard, you may not withhold the essential facts about an employee's participation in the Texas Municipal Retirement System, but you must withhold the documents related to deferred compensation plans and to optional life and health insurance. Participation in the Texas Municipal Retirement System is not optional when it has been adopted by the city and contributions are paid in part by the city. *See* Gov't

Code §§ 855.402, 403. Therefore, the public has a legitimate interest in all the information about this system except the names of the beneficiaries. Open Records Decision No. 600 at 10. The public does not, however, have a legitimate interest in the employee's personal financial choices. For your convenience, we have marked the information that you must withhold.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 24982

Enclosures: Submitted documents

cc: Ms. Mikel Ward  
Spartan Chairperson  
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(w/o enclosures)