



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1996

Ms. Amy L. Whitt
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-0664

Dear Ms. Whitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39179.

The City of Lubbock (the "city") received a request for nine categories of information including copies of the personnel files of all city employees. You believe that this request is unduly burdensome, because the city possesses approximately 200,000 documents that are responsive to the request. Although the city may be able to require the requestor to post bond for or prepay the costs of responding to this request, *See* Gov't Code § 552.263, the Open Records Act gives the requestor access to all responsive information that is subject to required public disclosure. The city may discuss with the requestor how he may narrow his request, but in doing so, the city should advise the requestor of the types of information available so that he may appropriately revise his request. *See* Open Records Decision No. 561 (1990).

The city's overriding concern with regard to this request is "the vast amount of copies requested and how the [c]ity should manage the charges involved." Section 552.263 allows a governmental body to "require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if the charge for the copy is estimated by the governmental body to exceed \$100." In providing the requestor with copies of the requested documents, the city will incur costs well in excess of \$100.¹

¹Section 552.261 states that if a request is for more than fifty pages of documents, the cost of obtaining the information for the requestor "shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead." Pursuant to section 552.262, the city used the rules adopted by the General Services Commission to estimate the costs the city would incur in responding to this request.

The city has asked the requestor to prepay to the city 50% of the estimated costs of either copying all responsive documents or deleting excepted information from the documents so that he may view them. We believe that the city's proposed method of receiving payment for responding to the request complies with the mandates of the Open Records Act.

The requestor asks the city manager to answer several questions. You contend that the city need not answer interrogatories. We agree. A governmental body must make a good faith effort to relate a request to information which it holds, Open Records Decision No. 561 (1990), but the Open Records Act does not require a governmental body to answer factual questions. Open Records Decision Nos. 555 (1990).

You believe that certain information in the requested personnel files is excepted from required public disclosure by sections 552.101, 552.102, and 552.117 of the Government Code. You have submitted a representative sample of personnel information to this office for review, and you have marked those portions of the information that you believe are excepted from disclosure.² Sections 552.024 and 552.117 of the Government Code were amended by the Seventy-fourth Legislature to include social security numbers and information revealing whether a government employee has family members. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Tex. Sess. Law Serv. 5127, 5130, 5132. In pertinent part, section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, and familial information of the following persons: all peace officers, as defined by article 2.12 of the Code of Criminal Procedure; security officers commissioned under Education Code section 51.212; and all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Id.* § 9, at 5132. You may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after this request for information 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. Section 552.117 does not apply to an applicant for employment. Open Records Decision No. 455 (1987).

Social security numbers may also be confidential under federal law. Amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), incorporated into the Open Records Act by section 552.101, make confidential social security numbers obtained or maintained by authorized persons pursuant to any provision of law enacted *on or after October 1, 1990*. Open Records Decision No. 622 (1994) at 2-3. Thus, if social security numbers found in the requested information were obtained or maintained

²The "representative sample" is the contents of one employee's personnel file. We assume that this "representative sample" is truly representative of the requested personnel records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

pursuant to any such provision of law, the numbers are confidential and may not be publicly disclosed.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together insofar as they implicate the privacy rights of individual employees.

The personnel file contains financial information relating to retirement benefits that you contend is excepted from disclosure by sections 552.101 and 552.102. This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to the state retirement system. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an optional benefits plan offered by the city or state. *Id.*

We have previously determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy. *Id.* at 10. Consequently, beneficiary information contained in the requested documents is excepted from required public disclosure under sections 552.101 and 552.102. The fact that an employee participates in a group insurance plan funded by the city or state is not information that is excepted from disclosure. *See id.* Information relating to the employee's choice of carrier and his election of optional coverages is excepted from disclosure. *See id.* Finally, direct deposit authorization forms are excepted from disclosure under sections 552.101 and 552.102. *Id.* at 11-12.

You have marked several other types of information that may be excepted from disclosure by sections 552.101 and 552.102. Information obtained by the city about the

medical condition or history of an employee or applicant is confidential under the American with Disabilities Act. 42 U.S.C. § 12112 (d)(3)(B). See Open Records Decision No. 641 (1996). We are unaware of any federal statute that prohibits the city from releasing a DD214 form. Therefore, only those types of information on the DD214 form that are excepted from disclosure under sections 552.101, 552.102, or 552.117 may be withheld from disclosure here. An employee's drivers' license number is not excepted by common-law privacy and therefore must be released. See generally Open Records Decision No. 455 (1987). Other personnel information not ordinarily protected by common-law privacy includes applicants' and employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names, occupations, addresses and phone numbers of character references, job performance or ability, birth dates, height, weight, gender, and race. See Open Records Decision No. 455 (1987); see also Open Records Decision Nos. 467 (1987); 444 (1986); 421 (1984); 405 (1983). We have enclosed a list of information that is confidential by law. We suggest that you use this as a guideline for releasing information from personnel files.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39179

Enclosures: Submitted documents, Confidentiality list

cc: Mr. Kenny Harris
P.O. Box 743
Denver City, Texas 79323-0743
(w/Confidentiality list)

³The requestor also asks for copies of all travel and expense reports for 1995. Although you submitted a representative sample of the reports to us, you assert no exception to disclosure of the reports. Therefore, we do not address the release of the reports here.