Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 9, 1996

Mr. Mark T. Sokolow
City Attorney
City of Port Arthur
P. O. Box 1089
Port Arthur, Texas 77641-1089

OR96-1419

Dear Mr. Sokolow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40733.

The City of Port Arthur (the "city") received several requests for information regarding utility payments and utility debts owed to the city by former and current council members, city employees, and members of the public, as well as a request for the salary of a city employee. You submitted a sample of the requested information to this office and claim that it is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.[1] We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. Although the submitted records do not appear to be "information in a personnel file," we will, however, address whether the requested information is protected by common-law privacy.

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[1]In reaching our conclusion, 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 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.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy. Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). For information to be protected from public disclosure under section 552.101, in conjunction with the common-law right to privacy, the information must meet the criteria set out in *Industrial Foundation*. Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.*; Open Records Decision No. 611 (1992) at 1.

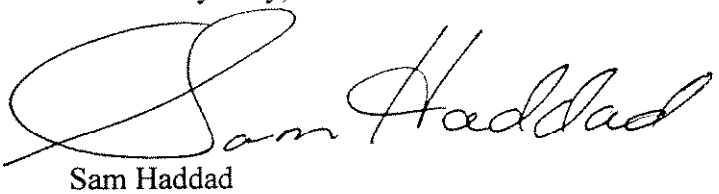
You assert that the submitted information is excepted from required public disclosure under section 552.101 of the Government Code, because you believe it would be an "invasion of privacy" to disclose such information. However, this office has distinguished between background financial information and information regarding a particular transaction between the individual and a public body. *See* Open Records Decision Nos. 523 (1989), 373 (1983). This office generally considers information regarding a specific transaction between an individual and a public body to be public information. For example, this office has held that the amount of a debt to a public hospital, together with the names of debtors and dates of delinquency, is not excepted by common-law privacy. Open Records Decision No. 385 (1983); *see also* Open Records Decision No. 523 (1989) (determining whether certain information in loan files of Veterans Land Program is protected by right of privacy).

Ordinarily, the public has an interest in knowing who owes money to a governmental body. *See* Open Records Decision Nos. 480 (1987) (names and addresses of students who have received and defaulted on loans administered by Texas Guaranteed Student Loan Corporation not protected by common-law privacy), 443 (1986) (city's utility bill ledgers not confidential under common-law privacy). The sums owed to the city's utility services by former and current council members, city employees, and members of the public are not protected from disclosure pursuant to the common-law right to privacy. Therefore, the city may not withhold the requested information from the requestor pursuant to section 552.101.

Additionally, this office has long held that information relating to a public employee's salary is clearly public information. Open Records Decision No. 342 (1982) at 3 (name, position, experience, tenure, salary and education long held to be disclosable). This information is not highly intimate or embarrassing and there exists a legitimate public interest in this information. *See* Open Records Decision No. 165 (1977). Thus, the requested information is not excepted under either sections 552.101 or 552.102 and must be disclosed.

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,



Sam Haddad
Assistant Attorney General
Open Records Division

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Ref.: ID# 40733

Enclosures: Submitted documents

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