



Office of the Attorney General
State of Texas

August 15, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Amy Whitt
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR97-1830

Dear Ms. Whitt:

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# 108280.

The City of Lubbock (the "city") received an open records request for the personnel files of two city employees. You state that you have released to the requestor much of the requested information. You seek to withhold other portions of the personnel files, which you have marked, pursuant to sections 552.101, 552.102, and 552.117 of the Government Code.¹

We generally agree that the information you have marked is confidential under the exceptions you claim and therefore must be withheld from the public. Section 552.117(1) requires that the city withhold its employees' home address, home telephone number, social security number, and any information revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code. Assuming the subject employees have made such an election, we conclude that these types of information must be withheld. However, even if such an election has not been made, we note that section 552.117(2) makes confidential the same categories of information pertaining to "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

¹We note that one of the employees whose personnel file is at issue is a police officer with the city police department. Pursuant to section 143.089(g) of the Local Government Code, the department's internal file on this employee is confidential in its entirety. We assume that the records before us are from the employee's civil service file, which may be subject to public disclosure, rather than from the department's internal file. *See generally* Open Records Decision No. 562 (1990).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) We note that some of the records you submitted to this office are made confidential by statute. The Texas Medical Practice Act, V.T.C.S. article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have marked the documents that the city may release only in accordance with article 4495b. We also note that the annual statements pertaining to participation in the Texas Municipal Retirement System are made confidential under section 855.115 of the Government Code and may not be released in this instance.

We next discuss the applicability of section 552.102(a) of the Government Code, which protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101. The information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982); 298, 284, 269 (1981); 224 (1979); 169 (1977).

We agree that some of the information that you have marked is protected by common law privacy under section 552.102 because it reflects the personal financial decisions of the employees regarding amounts withdrawn from their paychecks and insurance coverage. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Accordingly, the city must withhold these types of information from the public.

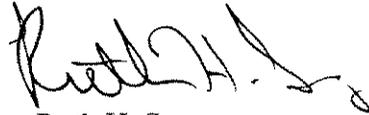
Finally, we discuss the applicability of section 552.102(b) of the Government Code, which exempts from required public disclosure

a transcript from an institution of higher education maintained in the personnel file of *a professional public school employee*, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee. [Emphasis added.]

Neither of the employees who are the subject of the open records request is a "professional public school employee." Consequently, the city may not withhold any of the college transcript information from the public pursuant to section 552.102(b). We also note that this type of information is not protected by common law privacy. See *Klein Indep. Sch. Dist. v. Mattox*, 830 F.2d 576 (5th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/cbh

Ref.: ID# 108280

Enclosures: Marked documents

cc: Mr. Efren Villanueva
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(w/o enclosures)

