



May 25, 2000

Ms. Elizabeth Lutton
Senior Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2000-2064

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 135912.

The City of Arlington (the “city”) received a request for access to the personnel records of a named police officer. You state that a majority of the information in the file will be released to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information requested.¹

You assert that some of the information contained in Exhibit 2 is protected from disclosure by section 552.117. Section 552.117(2) excepts from public disclosure a peace officer’s home address, home telephone number, social security number, and information indicating whether the peace officer has family members. We have marked the information which you must withhold under section 552.117(2) of the Government Code.

We note that the some of the submitted information contains the police officer’s driver’s license number. Section 552.130(a) of the Government Code excepts from disclosure

¹In 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 Nos. 499 (1988), 497 (1988). 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.

information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information that you must withhold under section 552.130(a) of the Government Code.

Next, we address the responsive financial information represented by Exhibit 3. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses common law privacy. Information is confidential under common law privacy (1) if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) if the information is of no 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). Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Therefore, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any consequent payroll deduction is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). However, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the common law right of privacy. *Id.* at 10-11. Similarly, this office has determined that information revealing the personal financial decision to have certain deductions made from an employee's paycheck meets the *Industrial Foundation* test. Open Records Decision No. 545 (1990).

Therefore, the information regarding choice of beneficiary, paycheck deductions, optional coverages, as well as information revealing an employee's decision to contribute to charitable organizations is protected by common law privacy as encompassed by section 552.101. *See* Open Records Decision No. 600 at 10 (1992). Additionally, some of the documents contain checking account information which is protected by common law privacy. We have marked those documents in Exhibit 3 that must be withheld under section 552.101. The city must release the rest of the responsive financial information.

The requested information also contains federal tax forms, a sample of which you have submitted as Exhibit 4. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Thus, the city must withhold any tax forms from disclosure under section 552.101 as information deemed confidential by federal statute.

Section 159.002(b) of the Texas Occupations Code protects from disclosure "[a] record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician." The documents you submitted to this office in Exhibit 5 include medical records, access to which is governed by provisions outside the Public Information Act. Open Records Decision No. 598 (1991). The Occupations Code provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. We have marked the documents in Exhibit 5 which appear to be confidential under section 159.002(b) of the Occupations Code.

Finally, you assert that the information found in Exhibit 6 may be withheld under common law privacy and section 552.101. We do not agree that this information meets the two part test established by *Industrial Foundation*. The information contained in Exhibit 6, while perhaps embarrassing, is a voluntary admission by the officer and is of legitimate public interest. Therefore, you must release Exhibit 6.

This letter ruling is limited to the particular records 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 records or any other circumstances.

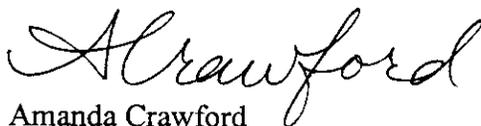
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 135912

Encl. Submitted documents

cc: Jack Douglas, Jr.
Fort Worth Star-Telegram
400 W. 7th Street
Fort Worth, Texas 76102
(w/o enclosures)