OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 2, 2000

Mr. Steven D. Monté
Assistant City Attorney
Office of City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-2164

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136169.

The Dallas Police Department (the "department") received a request for any and all of the City of Dallas' and Dallas Police Department's documents or records pertaining to a particular employee of the department. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. You have submitted a representative sample of the requested information.[1] We have considered the exceptions you claim and reviewed the submitted documents.

Initially, we note that the submitted documents contain two completed Internal Investigations Control Nos. 96-110 and 99-146 concerning the named employee. Section 552.022(a)(1) states that a completed investigation made of, for, or by a governmental body, except as provided by Section 552.108 is public information not excepted from public disclosure unless made confidential under other law. You contend that these documents are confidential under section 552.101 and common law privacy. Section 552.101 excepts from

[1]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 those submitted to this office.

required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Under common law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. However, common law privacy does not apply to embarrassing or intimate information "unless the records [at issue] are also of no legitimate interest to the public." Open Records Decision No. 470 at 4 (1987); *see also* Open Records Decision No. 464 (1987). Furthermore, the public has a genuine interest in information concerning a public employee's job performance and the reasons for dismissal, demotion or promotion. Open Records Decision No. 444 at 5-6 (1986); *see also* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 208 (1978) (disciplinary action against public employee available to public).

After reviewing the documents, we conclude that Internal Investigation Control No. 99-146 contains information pertaining to a third party that must be withheld from public disclosure under section 552.101 and common law privacy. We have marked this information that must be redacted prior to the release of the documents.

Additionally, we find that Internal Investigation Control No. 96-110 contains information that falls within the purview of section 552.117. Section 552.117(2) provides for the confidentiality of current and former peace officers' home addresses, home telephone numbers, social security numbers, and family member information. We have marked the information in the investigation report and the remaining submitted documents that is excepted from disclosure under section 552.117(2). The department must withhold this information. The department must release the remainder of the investigation report.

The remaining submitted documents also contain personal financial information. As explained above, section 552.101 and the common law right to privacy except information from disclosure that is considered to be highly intimate and embarrassing and there is no legitimate public interest in its release. In Open Records Decision No. 373 (1983), we

concluded that personal financial information can generally be considered highly intimate and embarrassing:

> In our opinion, all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities. . . .

However, information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest not generally protected from public disclosure by common law privacy. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). For example, the salary of a public employee is not excepted from disclosure. Open Records Decision No. 342 (1982). Further, the doctrine of common law privacy does not generally except from disclosure public employee participation in an insurance program that is funded wholly or partially by his or her employer. Open Records Decision No. 600 at 9 (1992). Of course, personal financial information does not meet the test for common law privacy unless it is also of no legitimate interest to the public. In Open Records Decision No. 373 (1983), we concluded that the determination of whether the public's interest in obtaining highly intimate and embarrassing information is sufficient to justify its disclosure must be made on a case-by-case basis.

It appears that some of the submitted information relates to the employee's voluntary allocation of his salary to optional benefits plans offered by the city. This office has ruled that participation in such plans is a personal financial decision that is protected by section 552.101. *See* Open Records Decision Nos. 600 (1992) (federal tax Form W-4, Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). On the other hand, financial information that reflects the employee's mandatory contributions to the city's health plan is not private. Open Records Decision No. 600 (1992). We have marked the information we conclude reflects the employee's voluntary participation in benefits plans offered by the department. The department must withhold this information under common law privacy.

Finally, you assert that the fingerprint records contained in the submitted documents are excepted from public disclosure under section 552.101 and common law privacy. However, we do not consider fingerprints to be the type of information protected by common law

privacy. You cite no authority in support of a contention that fingerprints are "highly intimate or embarrassing," nor do we believe this to be the case. Therefore, we conclude that the submitted fingerprints are not excepted from required public disclosure under the doctrine of common law privacy.

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.

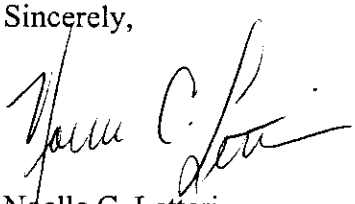
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 136169

Encl. Submitted documents

cc: Ms. Jane Bishkin
Attorney & Counselor
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(w/o enclosures)