



August 28, 2000

Ms. Lan P. Nguyen
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-3317

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138423.

The City of Houston (the "city") received a request for various types of information from the personnel file of a specified city official. You state that the city intends to release most of the requested information to the requestor, however, you claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). 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* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Public Information Act. Therefore, we will dispose of your claim regarding section 552.102 by addressing

¹The submitted information consists of health insurance election forms. You state that payroll deduction forms for union membership dues would be sent to this office under separate cover. As of the date of this letter, we have not received any additional information from the city. Because the city has not submitted the requested information regarding union membership dues, we have no basis for finding such information confidential. Thus, we have no choice but to order release of the payroll deduction information per section 552.302. If the department believes that such information is confidential and may not lawfully be released, the department must challenge this ruling in court as outlined below.

section 552.101 in conjunction with common law privacy applies to the submitted information.

Section 552.101 excepts from 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 Foundation 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). 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). On the other hand, 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).

The submitted information consists entirely of insurance enrollment forms filled out by the city official specified in the request for information. You explain that the submitted election forms reflect voluntary decisions on the part of the city official. Based on your representations and our review of the submitted materials, we find that the information constitutes personal financial information that is confidential under common law privacy. Therefore, the city must withhold the submitted information under section 552.101.

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.

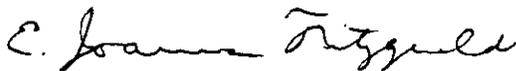
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge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



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 138423

Encl: Submitted documents

cc: Mr. J. Earl Hall
2710 Pecan Court
Missouri City, Texas 77459
(w/o enclosures)