



September 18, 2000

Mr. Morris E. Sandefer
Commissioner
Office of Fire Fighters' Pension Commissioner
P.O. Box 12577
Austin, Texas 78711-2577

OR2000-3582

Dear Mr. Sandefer:

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# 139143.

The Office of the Fire Fighters' Pension Commissioner (the "commissioner") received a request for information relating to proofs of claims or applications for benefits furnished to the commissioner in connection with the deaths of two firefighters.¹ You have released redacted documents that are responsive to the request for information. You believe that the redacted information may be confidential under section 552.101 of the Government Code. You have submitted comments in support of your claim under section 552.101. You also have provided written notice of the request for information to individuals whose interests may be affected by disclosure of the redacted information. *See* Gov't Code § 552.305.² We have considered the exception you claim and have reviewed the representative sample of information you submitted.³ We also have considered the written comments that we received

¹You inform us that the requestor modified his request to exclude social security numbers and death certificates.

²Section 552.305 provides in relevant part that "[i]n a case in which information is requested . . . and a person's privacy or property interests may be involved . . . a governmental body may decline to release the information for the purpose of requesting an attorney general decision." Gov't Code § 552.305(a). "A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released." Gov't Code § 552.305(b).

³This letter ruling assumes that the representative sample of information that you submitted is genuinely representative of the requested information as a whole. This ruling neither addresses nor authorizes the commission to withhold any requested information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

from the requestor and from an attorney for the individuals whom you notified under section 552.305.⁴

The information that you believe is confidential under section 552.101 involves retirement benefits that the deceased fire firefighters had accrued, death benefits payable to their beneficiaries, and the identities of the beneficiaries. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is protected by the common law right of privacy. Gov't Code § 552.101; *see also Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).⁵ Information must be withheld under section 552.101 in conjunction with common law privacy when that information (1) 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. *See Industrial Found.*, 540 S.W.2d at 685.

Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See generally* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983). Thus, a public employee's allocation of part of his or her salary to a voluntary investment program offered by the employer is a personal investment decision, and common law privacy excepts information about the allocation from public disclosure. *See* Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1990) (deferred compensation plan), 523 (1989) (contents of loan files of veterans participating in Veterans Land Board programs), 373 (1983) (contents of housing rehabilitation grant application files). On the other hand, common law privacy does not except from disclosure information about a transaction that is funded in part by the state or another governmental entity. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to a public body about an individual and basic facts regarding a particular financial transaction between the individual and the public body). In this instance, the individuals who accrued the retirement benefits and designated the prospective recipients of the death benefits are deceased. You inform us that public funds are being used to pay the death benefits to the decedents' beneficiaries. You recognize that the common law right of privacy is a personal right that lapses at the death of the individual whose privacy is protected. *See* Open Records Decision No. 272 at 1 (1981). You are uncertain,

⁴In a letter dated July 18, 2000, the requestor argues that the information that you withheld is not confidential. In a letter dated July 20, the beneficiaries' attorney contends that the information at issue should be withheld from the requestor under sections 552.101 and 552.110 of the Government Code.

⁵Both you and the attorney for the beneficiaries invoke the common law privacy aspect of confidentiality under section 552.101.

however, as to whether the right of privacy addressed in Open Records Decision No. 600 (1992) is that of the public employee who designates beneficiaries or the beneficiaries themselves. The right of privacy involved in that decision is that of the public employee. *See* ORD 600 at 11. In this instance, the privacy rights of the deceased firefighters have lapsed. Furthermore, these publicly-funded death benefits represent a matter of legitimate public interest because they involve financial transactions between the beneficiaries and a governmental body. *See also* Open Records Decision No. 385 at 2 (1983) (noting policy of full disclosure of public body's debtors and creditors). However, common law privacy protects the identities of the beneficiaries. *See* Open Records Decision No. 373 at 3-4 (1983) (stating that public's interest in expenditure of public funds ordinarily does not justify invasion of private individual's financial status). Therefore, we conclude that you must withhold information that would reveal the identities of the beneficiaries. We have marked that information. The rest of the responsive information is not excepted from disclosure under section 552.101 in conjunction with common law privacy.

The beneficiaries' attorney also argues that all of the information at issue is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the *property* interests of private parties by excepting from public disclosure two kinds of *proprietary* information: (1) trade secrets and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). As there is no indication that the beneficiaries assert a property interest in the requested financial information, section 552.110 is not applicable here. Accordingly, the information in question is not excepted from disclosure under section 552.110. *See also* Open Records Decision Nos. 661 at 5-6 (1999), 552 at 2-3 (1990).

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

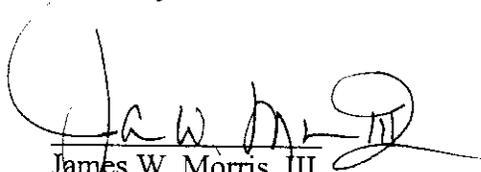
can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 139143

Encl. Submitted documents

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