



November 22, 2000

Mr. Guadalupe Cuellar
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2000-4503

Dear Mr. Cuellar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141576.

The City of El Paso (the "city") received a request for

- 1) [a]ny and all documentation that pertain to wages and benefits for all El Paso Police Department employees of the rank of Captain to the Chief of Police;
- 2) [a]ny and all documentation that pertain to merit wages, merit increases or merit benefits for El Paso Police Department employees holding the rank of Captain, Commander, Deputy Chief, Assistant Chief, and the Chief of Police;
- 3) [c]opy of the last two performance evaluations for all officers holding the position of Captain Commander, Deputy Chief, Assistant Chief and Chief of Police;
- 4) [a]ny documentation that pertains to merit increases for sworn Police Department employees for the last three fiscal years.

You indicate that you will release all information responsive to items 2, 3, and 4. However, you claim that a portion of the information responsive to item 1 is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. You have submitted responsive information, marked to indicate the portion which you contend is excepted from disclosure. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception applies to information made confidential by the common law right to privacy. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common law right to privacy 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 if the information is of no legitimate concern to the public. *Id.* Financial information concerning an individual is in some cases protected by a common law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that “all financial information relating to an individual . . . 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.” Open Records Decision No. 373 at 3 (1983). However, the case of public employees presents special considerations. Information regarding a financial transaction between a person and a governmental body is a matter of legitimate public interest. Open Records Decision No. 385 at 2 (1983). However, a public employee’s participation in a voluntary investment program or deferred compensation plan that is not funded by the governmental body is not considered a financial transaction between the individual and the governmental body. Such information is considered confidential and is excepted from public disclosure. Open Records Decision No. 545 (1990).

Examples of financial transactions considered to be between the person and the governmental body include: a donation to a public institution, Open Records Decision No. 590 (1991); a debt owed to a public hospital, Open Records Decision No. 385 (1983); and a public employee’s participation in an insurance program funded wholly or partially by his employer. Open Records Decision No. 600 (1992).

You have identified portions of the responsive information which you assert reflect voluntary financial transactions of city employees. Based on your representations and our review of the submitted information, we conclude that most of the highlighted portion of this information is protected by the common law right of privacy. This information must, therefore, be withheld under section 552.101 of the Government Code. However, you have not indicated that participation in the pension plan is voluntary. The information in this category is made confidential by the common law right of privacy *only* if participation is voluntary. Therefore, this information must be withheld if participation is voluntary and must be released if participation is not voluntary.

Section 552.117 of the Government Code excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family member information of peace officers, irrespective of their election under section 552.024. *See* Gov’t

Code § 552.117(2). Therefore, section 552.117 requires you to withhold this information for city police officers. The responsive social security numbers must therefore be withheld under section 552.117.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

NEB\er

Ref: ID# 141576

Encl: Submitted documents

cc: Officer Tom Barbee
Grievance Committee Chair
El Paso Municipal Police Officer's Association
747 E. San Antonio Avenue, Suite 103
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(w/o enclosures)