



May 7, 2001

Mr. John M. Knight
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2001-1855

Dear Mr. Knight:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146822.

The City of Lubbock (the "city") received a written request for all records pertaining to the "benefits" of a deceased employee. The requestor appears to be the widow of the deceased employee. You contend that portions of the requested information are excepted from required public disclosure under sections 552.101, 552.115, and 552.117 of the Government Code.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that complaints against the deceased employee, who served as a city police officer, are made confidential under section 143.089 of the Local Government Code. You did not, however, submit any such information to this office to review, nor do we believe that any such information would be responsive to the current request. We therefore conclude that none of the information at issue may be withheld under section 143.089 of the Local Government Code.

We note, however, that among the records at issue are the employee's annual statements pertaining to participation in the Texas Municipal Retirement System. These records are made confidential under section 855.115 of the Government Code. Thus, the city must

¹Although you also raise section 552.108 of the Government Code, you have not explained why you believe this exception to be applicable to any of the records at issue. Accordingly, we do not address the applicability of this exception to disclosure. *See* Gov't Code §§ 552.301, 302.

withhold the annual statements under section 552.101 unless the city is otherwise authorized to release the records under section 855.115.²

Section 552.101 also protects information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

The right of privacy, however, is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ *ref'd n.r.e.*); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). On the other hand, if the release of information about a deceased person reveals highly intimate or embarrassing information about living persons, the information must be withheld under the common law privacy. *See* Attorney General Opinion JM-229. In this regard, we note that many of the records you submitted to this office contain beneficiary information. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

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.

Open Records Decision No. 373 at 3 (emphasis added). We therefore conclude that to the extent the records at issue reveal the identity of a currently designated beneficiary, that identifying information must be withheld pursuant to common law privacy to protect the individual's privacy interests. However, because the requestor has a special right of access to such information pertaining to herself, any information that identifies the requestor as the current beneficiary must be released to her. *See* Gov't Code § 552.023.

You next contend that the employee's death certificate is excepted from public disclosure pursuant to section 552.115 of the Government Code. Birth or death records held by the bureau of vital statistics or local registration officials are excepted from required public disclosure under section 552.115 of the Government Code. However, because the death

²We note that the requestor appears to be the spouse of the deceased employee and may therefore have a special right of access to the retirement records held by the Municipal Retirement System. *See* Gov't Code § 855.155(a)(1)(B); *see also* Gov't Code § 855.155(a)(1)(A).

certificate in this case is not being held by the bureau of vital statistics or local registration officials, section 552.115 is inapplicable. Accordingly, the city may not withhold the officer's death certificate pursuant to section 552.115.

We note, however, that the death certificate and other submitted documents contain information that the city must withhold pursuant to section 552.117 of the Government Code. Section 552.117(2) of the Government Code generally requires the city to withhold the following categories of information pertaining to a peace officer, as defined by article 2.12, Code of Criminal Procedure: the officer's current and former home address, home telephone number, social security number, and information revealing whether the officer has family members. Open Records Decision No. 622 (1994). In our opinion, however, the home address and telephone number, social security number, and family member information of a deceased peace officer would not be protected under section 552.117(2). Section 552.117(2) does not apply to former peace officers. Moreover, section 552.117(4) only applies to officers killed in the line of duty.

However, section 552.117 information pertaining to a deceased individual who is a former official or employee of a governmental body is protected under section 552.117(1), the coverage of which includes "current and former" officials or employees who request that their information be kept confidential under section 552.024. Because the deceased employee made an election under section 552.024 to keep his home address, home telephone number, social security number, and family member information confidential, the city must withhold this information, which you have highlighted.

In summary, the city must withhold the Municipal Retirement System records and the identity of any currently designated beneficiary, except for the requestor, pursuant to section 552.101 of the Government Code. The city must also withhold the employee's home address, home telephone number, social security number, and family information pursuant to section 552.117(1) of the Government Code. All remaining information must be released to the requestor.

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).

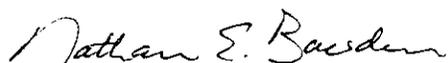
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/RWP/seg

Ref: ID# 146822

Encl. Submitted documents

bcc: (w/o enclosures)