



June 5, 2001

Mr. Jesus Toscano, Jr.  
Administrative Assistant Attorney  
City of Dallas  
1500 Marilla  
Dallas, Texas 75201

OR2001-2335

Dear Mr Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148008.

The City of Dallas (the "city") received a request for information regarding several current and former city employees. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304.

You acknowledge that the city failed to comply with section 552.301(b) of the Government Code in asking for this decision. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The city originally received the request for information on December 27, 2000. The request was modified in a letter received by the city on January 4, 2001. The original request was then renewed by a letter received by the city on February 5, 2001. On February 28, 2001, the city sent the requestor a letter requesting a deposit for reproduction charges. On March 12, 2001, the city received a letter from the requestor objecting to the reproduction charges and renewing his original request for information. Because the request for a decision was sent to this office on April 2, 2001, the city failed to request a decision within the ten business day period as required by section 552.301(b).

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<sup>1</sup>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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Sections 552.101, 552.117 and 552.130 provide compelling reasons to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address your claimed exceptions.

You first assert that the blue highlighted portions of Exhibit E are exempt from disclosure under section 552.101 in conjunction with the common law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Common law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has concluded that financial information concerning an individual is in some instances protected by a common law right to 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).

You explain that the blue highlighted portions of Exhibit E consist of the city's five digit personnel identification number and that these numbers are used as the first five digits of a six digit account number at the City Employees Credit Union. You further assert that the release of these personnel identification numbers could give members of the general public access to credit union account records, and therefore, should be excepted under section 552.101 of the Government Code in conjunction with common law privacy. As we believe that no legitimate public interest exists in city employees' credit union account numbers, we conclude that the city must withhold the personnel identification numbers of those employees who are in fact members of the credit union. All remaining identification numbers must be released. We have marked the type of information that you must withhold under section 552.101 for employees who are members of the city's credit union.

Second, you assert that the yellow highlighted portions of Exhibit E are exempt from disclosure under section 552.117 of the Government Code because they relate to the "home address, home telephone number, and social security number of a current or former government employee or official, as well as information that reveals whether the employee or official has family members." Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers,

or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires that the city withhold this information for a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). The city may not, however, withhold the information for a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made.<sup>2</sup> Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the city's receipt of the present request, we believe that the city must withhold this information from required public disclosure pursuant to section 552.117. We have marked the kinds of information that must be withheld under section 552.117 if the employee timely made the election not to allow public access to the information.

If the employee did not timely elect to withhold his social security number as prescribed by section 552.024, the social security number may nevertheless be confidential under federal law. A social security numbers may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Third, you assert that the red highlighted portions of Exhibit E are exempt from disclosure under section 552.130 of the Government Code because they contain information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Section 552.130 provides in relevant part that "[i]nformation is excepted from the

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<sup>2</sup> Within the submitted sample personnel files, records in Exhibit I show that both Rudolph Sarich and Robert Thrash have made their section 552.024 elections prior to the city's receipt of the present request, thus preventing public access to their home telephone numbers, home addresses, social security numbers, and whether they have family members. Because the personnel files only represent a sample of the personnel files originally requested, the city must still determine, with regard to the remaining employees whose information is at issue, whether a given employee had made the section 552.024 election at the time the request for information was made.

requirements of Section 552.021 if the information relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]” Therefore, the city must withhold driver's license and motor vehicle title or registration information pursuant to section 552.130 of the Government Code.

Fourth, you assert that Exhibits G and H are exempted in their entirety from disclosure under section 552.101 in conjunction with common law privacy because they contain financial information. As stated earlier, prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. Open Records Decision Nos. 600 (1992) (information regarding employee TexFlex benefits, dependent information, and designation of life insurance beneficiary is excepted by common law privacy), 545 (1992) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Open Records Decision No. 600 (1992). Exhibits G and H include information involving beneficiary designation forms and deferred compensation information designating primary and contingent beneficiaries. We believe that this information is protected by common law privacy. Therefore, we conclude that the city must withhold Exhibits G and H, in their entirety, under section 552.101 of the Government Code.

Fifth, you assert Exhibit F is excepted from public disclosure because it contains W-4 forms. Section 552.101 excepts from disclosure information protected by other statutes. Form W-4, the Employee's Withholding Allowance Certificate, is confidential as tax return information under title 26, section 6103(a) of the United States Code and must not be released. Open Records Decision No. 600 at 8-9 (1992). We note here that tax information was also found in other documents located within the sample employees' personnel files, in particular, the Payroll Change and Appointment Authorizations. We have marked those documents for your convenience.

We note that one of the files you submitted to this office for review includes an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Finally, we note that criminal history information within the submitted document is protected by common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked the criminal history information that is protected under common law privacy and must also be withheld under section 552.101.

In summary, the city must withhold personnel identification numbers under section 552.101 only when the employee is a member of the city's credit union; home telephone numbers, home addresses, social security numbers and information indicating whether an employee has family members must be withheld when the employee has timely fulfilled the requirements of section 552.024; social security numbers may be excepted under the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I); information that relates to a driver's license and motor vehicle title or registration must be withheld under section 552.130; information regarding an employee's dependent designations or designation of life insurance beneficiaries is excepted under section 552.101 in conjunction with common law privacy; W-4 forms are considered tax information and must be withheld; Form I-9 must be withheld; and, finally, criminal history information must be withheld under section 552.101. The 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 148008

Encl: Submitted documents

cc: Mr. Frantisek Benes  
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(w/o enclosures)