



September 6, 2001

Mr. C. Gaffney Phillips  
City Attorney  
City of Livingston  
P.O. Box 1093  
Livingston, Texas 77351

OR2001-3950

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151610.

The City of Livingston (the "city") received a request for (1) the last two finance reports for Judge John Martin, Police Chief Dennis Clifton, and Mayor Ben Ogletree; (2) employment applications for police officers Byron Lyons and Matt Parish; (3) the race, gender, and dates of employment of all police officers; and (4) the finance statement, employment application, resume, and date of employment of City Manager Sam Gordon. You indicate that you do not have information responsive to the requests for "finance statements." We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You further indicate that you will make information responsive to the request for the race, gender, and dates of employment of police officers available to the requestor. However, you claim that portions of the requested applications of the named police officers and city manager are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We begin by addressing your argument that some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. 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

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<sup>1</sup>We note that you do not seek to withhold the date of employment or resume of the city manager. To the extent you maintain such information, we assume you have released the information to the requestor. If you have not, you must do so immediately. See Gov't Code §§ 552.021, .022(a)(2), .301, .302.

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 act.<sup>2</sup> See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. See Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). We have reviewed the submitted information and marked the information that is private and must be withheld from public disclosure under section 552.102 of the Government Code.

Next, we address your contention that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement 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[.]

The submitted information contains Texas driver's license information. This information, which we have marked, must be withheld under section 552.130. The submitted information also contains a license plate number. To the extent this license plate number relates to a motor vehicle title or registration issued by an agency of the State of Texas, the license plate number, which we have marked, must also be withheld under section 552.130.

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<sup>2</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Finally, we consider whether any portion of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 provides:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure . . . regardless of whether the officer complies with Section 552.024 . . . .

Thus, section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the city manager timely elected to keep his personal information confidential, the city must withhold his home address and telephone number, social security number, and any information that reveals whether he has family members. The city may not withhold this information under section 552.117 if the city manager did not make a timely election to keep his personal information confidential. We have marked the portions of the city manager's application that may be excepted under section 552.117(1).

We note that the city manager's social security number may also be excepted from disclosure under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure 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 numbers 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 the city manager's social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the city manager's social security number, you 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.

On the other hand, section 552.117(2) excepts from public disclosure information that reveals a peace officer's current or former home address or telephone number, social security number, and family member information regardless of whether the peace officer elected to keep the information confidential under section 552.024 of the Government Code. Thus, the city must withhold the submitted peace officers' home addresses, home telephone numbers, social security numbers, and family member information under section 552.117(2). See Open Records Decision No. 622 (1994). For your convenience, we have marked those portions of the peace officers' employment applications that must be withheld under section 552.117(2).

In summary, you must withhold portions of the submitted information under section 552.102 of the Government Code. You must also withhold any Texas driver's license information and Texas license plate number contained in the submitted information under section 552.130 of the Government Code. You must withhold the submitted peace officers' home addresses and telephone numbers, social security numbers, and family member information under section 552.117(2). Finally, to the extent the city manager timely elected to keep his personal information confidential, you must also withhold the city manager's home addresses and telephone numbers, social security numbers, and family member information under section 552.117(1). In addition, you must withhold the city manager's social security number under section 552.101 of the Government Code if it was obtained or maintained pursuant to a provision of law enacted on or after October 1, 1990. You must release the remainder of the submitted information.

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

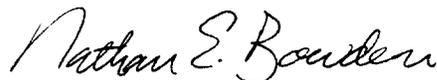
body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. Dep't of Pub. 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/sdk

Ref: ID# 151610

Enc: Submitted documents

c: Ms. Paula Hill  
P.O. Box 1412  
Livingston, Texas 77351  
(w/o enclosures)