OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2003-2040

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178684.

The Dallas Police Department ("the Department") received a request for copies of membership lists of various police unions. You assert the requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This statute encompasses the doctrine of common-law privacy. Common-law privacy protects information when (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined some personal financial information is highly intimate or embarrassing and thus, meets the first part of the *Industrial Foundation* test. 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, healthcare, or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989)

(credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information).

You inform us the Department does not maintain any lists responsive to the request.[1] Further, you explain the Department can generate such lists only by examining employee payroll sheets. We believe information reflecting an employee's decision to pay union dues through payroll deduction constitutes personal financial information that is confidential under section 552.101 based on common-law privacy because it is intimate information and there is no legitimate public interest in this information. Accordingly, we conclude the Department must withhold the requested information under section 552.101 of the Government Code and common-law privacy.

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).

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[1] Several provisions of the Public Information Act (the "Act") imply a governmental body need not prepare new information to comply with the Act; the Act applies to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to provide information that is not in existence. Open Records Decision No. 362 (1983).

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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 178684

Enc: Submitted documents

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(w/o enclosures)