



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2003

Mr. Bryan P. Fowler
The Fowler Law Firm, L.L.P.
300 West Davis, Suite 510
Conroe, Texas 77301

OR2003-8317

Dear Mr. Fowler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191282.

The City of Montgomery (the "city"), which you represent, received a request for information relating to a former city police officer. You claim that some of the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹ We also have considered the comments that we received from the requestor.²

We first note that section 552.101 of the Government Code is applicable to some of the submitted information.³ Section 552.101 excepts from required public disclosure

¹We note that you have redacted the submitted information that you claim is excepted from public disclosure. This office cannot review redacted information. A governmental body that asks this office to determine whether information is excepted from disclosure must submit the information in a form that permits this office to determine whether it comes within an exception to disclosure. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

²*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

³Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private). We have marked the submitted information that is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy also encompasses certain types of personal financial information. This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) 545 at 4 (1990), 523 at 4 (1989), 373 at 4 (1983). Thus, a public employee’s allocation of part of the employee’s salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (participation in TexFlex), 545 at 3-5 (1990) (deferred compensation plan). Likewise, an employee’s designation of a retirement beneficiary is excepted from disclosure under the common-law right to privacy. *See* Open Records Decision No. 600 at 9 (1992). However, where a transaction is funded in part by a governmental body, it involves the employee in a transaction with the governmental body, and the basic facts about that transaction are not protected by common-law privacy. *Id.* at 9. We have marked personal financial information that is protected from public disclosure by common-law privacy under section 552.101 of the Government Code, provided that the marked information does not relate to a transaction that was funded in whole or in part by a governmental entity.

Next, we address the city’s claim under section 552.117 of the Government Code. The present and former home addresses and home telephone numbers, personal pager and mobile numbers, social security number, and family member information of a peace officer are excepted from disclosure under section 552.117(a)(2), regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

You indicate that the submitted information relates to a peace officer. Therefore, we have marked the types of information that are excepted from disclosure under section 552.117(a)(2).

The city may also be required to withhold a small portion of the submitted information under section 552.1175 of the Government Code. Section 552.1175 also applies to information that relates to peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). In this instance, the submitted documents contain information relating to an individual who is identified as a City of Conroe police officer. If this individual is still a peace officer and elects to restrict access to this information in accordance with section 552.1175, or if he is no longer a peace officer but previously made such an election when he was still a peace officer, then the city must withhold his home address and telephone number, social security number, and family member information under section 552.1175. Otherwise, the city must release this information.

Lastly, we note that the submitted information also includes a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that the city must withhold under section 552.130.

In summary: (1) we have marked information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy; (2) we also have marked information that the city must withhold under sections 552.117(a)(2) and 552.130; and (3) we have marked other information that may be excepted from disclosure under section 552.1175. The rest of the submitted information must be released.

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 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 191282

Enc: Submitted documents

c: Mr. Jim McClaugherty
703 Paradise Lane
Montgomery, Texas 77356
(w/o enclosures)