



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2004

Ms. Maleshia B. Farmer  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2004-10613

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215177.

The City of Fort Worth (the "city") received a request for copies of e-mails spanning a specified time period and copies of specified personnel files. The city states that it will release a portion of the requested information, but claims that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

The city asserts that some of the submitted information is excepted from disclosure under section 552.101. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under

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<sup>1</sup>Although you did not timely raise section 552.137, this provision constitutes a compelling reason to withhold information, and we will address your arguments on this issue. See Gov't Code §§ 552.301, .302.

common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). The information we have marked in Exhibit C and the document in Exhibit G are protected by common-law privacy and must be withheld from disclosure under section 552.101.

The city claims that the employee W-4 forms in Exhibit E are excepted from disclosure under section 6103 of title 26 of the United States Code. Section 552.101 also encompasses information made confidential by statute. Employee W-4 forms are made confidential by federal law. 26 U.S.C. § 6103(a); Open Records Decision No. 600 (1992). The city must therefore withhold the information in Exhibit E under section 552.101 of the Government Code.

Exhibit F consists of I-9 Employment Eligibility Verification forms, with attachments. Form I-9 is governed by section 1324a of title 8 of the United States Code, which provides that an I-9 form and "any information contained in or appended to such 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. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the I-9 forms and attachments in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 forms and attachments in Exhibit F are confidential and may only be released in compliance with the federal law and regulations governing the employment verification system.

You assert that some of information in Exhibit C is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(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 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. In this instance, you inform us that the employees at issue timely elected confidentiality under section 552.024. You must therefore withhold the information we have marked for these individuals under section 552.117(a)(1).

You also claim that some of the information in Exhibit C is excepted from release 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[.]

Therefore, the city must withhold from disclosure the marked Texas drivers' license information in Exhibit C under section 552.130.

Exhibit C also contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
- (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The city must withhold the e-mail addresses that we have marked under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary, the city must withhold 1) the marked information in Exhibit C and the document in Exhibit G under section 552.101 and common-law privacy; 2) the W-4 forms in Exhibit E under section 552.101 in conjunction with section 6103 of title 26 of the United States Code; 3) the I-9 forms and attachments in Exhibit F under section 1324a of title 8 of the United States Code; 4) the marked home addresses and telephone numbers, social security numbers, and family member information in Exhibit C under section 552.117(a)(1); 5) the marked Texas drivers' license information in Exhibit C under section 552.130; and 6) the e-mail addresses that we have marked in Exhibit C under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. The remaining submitted 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

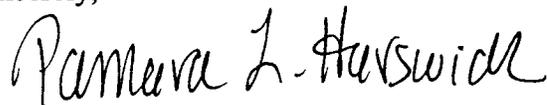
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 215177

Enc. Submitted documents

c: Ms. Sylvia Galvan  
1013 Lydick Lane  
River Oaks, Texas 76114  
(w/o enclosures)