



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 1, 2005

Mr. Warren Schott  
Executive Director  
San Antonio Fire and Police Pension Fund  
311 Roosevelt  
San Antonio, Texas 78210-2700

OR2005-00959

Dear Mr. Schott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 217889.

The San Antonio Fire and Police Pension Fund (the "fund") received two requests from the same requestor for information related to a named individual's retirement benefits, including when the individual began receiving his pension benefits, the amount he receives, the periodic schedule of his payments, and the employment start and retirement dates used to calculate his pension payments. You state that you do not wish to withhold any information, but ask whether the requested information is excepted under section 552.101 of the Government Code in conjunction with the doctrine of common law privacy. We have reviewed the submitted information. We have also received and considered comments submitted by the named individual. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected under the common-law right of privacy. 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. Prior decisions of this office have found that financial information relating 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. 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 that decision is excepted from disclosure by common-law privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1990) (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). Thus, an employee's participation in a group pension or insurance plan funded by the governmental body is not excepted from disclosure under common-law privacy. *Id.*; Open Records Decision No. 480 (1987).

Upon review of the submitted information and the named individual's assertions, we find that information concerning when the individual began receiving his pension benefits, the periodic schedule of his payments and the employment start and retirement dates used to calculate his pension payments is not highly intimate or embarrassing information. Furthermore, the public has a legitimate interest in the monthly benefit amounts. *See* Open Records Decision Nos. 600 (1992), 480 (1987). Therefore, the information is not confidential under common-law privacy and 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 217889

Enc. Submitted documents

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