ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2005

Ms. Holly Lytle
Assistant County Attorney
El Paso County
500 E. San Antonio, Room 503
El Paso, Texas 79901

OR2005-11088

Dear Ms. Lytle:

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# 238083.

The County of El Paso (the "county") received a request for a list of all county employees, including their name, job, wage rate, hire date, department, home address, unique identifier, and union membership. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.1175 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.[2]

You claim that some of the home addresses in the submitted information must be withheld under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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

[1]Although you raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

[2]We note your statement that you have withheld the requested social security numbers as allowed under section 552.147(b) of the Government Code.

under section 552.024 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of peace officers regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.[3] In this case, you inform us that the employees who you have marked with an "R" timely elected confidentiality under section 552.024. Therefore, the county must withhold the home addresses of these employees who timely elected to keep their information confidential under section 552.117(a)(1) of the Government Code. Further, you state that the employees marked with the word "uniform" are the county's law enforcement officers. Therefore, the county must withhold these officers' home addresses under section 552.117(a)(2) of the Government Code.[4]

You claim that the information that designates whether the employee is a union member is excepted from public 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 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 v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. In order for information to be protected from public disclosure by the doctrine of common-law 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 it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. 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 common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). You state that the county can only determine which of its employees are union members by examining the payroll deduction records. We believe that 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. Accordingly, we conclude that the union

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[3]The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

[4]Because our ruling is dispositive as to this information, we need not address your remaining argument under section 552.1175 against disclosure.

designation by the word "union" next to an employee's name is protected by common-law privacy and must therefore be withheld under section 552.101 of the Government Code.

In summary, the county must withhold the home addresses of the employees who timely elected to keep their information confidential under section 552.117(a)(1) of the Government Code. Additionally, the county must withhold the officers' home addresses under section 552.117(a)(2) of the Government Code. The county must withhold the union designation by the word "union" under section 552.101 of the Government Code in conjunction with common-law privacy. As you do not raise any other exceptions against disclosure, the remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 238083

Enc. Submitted documents

c: Marie Manlangit
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El Paso, TX 79915
(w/o enclosures)