



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2006

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2006-06627

Dear Mr. Ray:

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# 252053.

The City of Longview (the "city") received a request for the (1) date of payment, (2) amount of payment, and (3) to whom payment was made pertaining to payments, compensation, and remuneration made by the city to the former fire marshal from October 1, 2001 to the present.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the some of the submitted information is not responsive to the present request. The requestor states that he only seeks the (1) date of payment, (2) amount of payment, and (3) to whom payment was made pertaining to payments, compensation, and remuneration made by the city to the former fire marshal from October 1, 2001 to the present. Any additional information within the submitted documents is not responsive.

¹ The requestor has clarified in an April 18, 2006 letter to our office that these three categories of information are all that he seeks.

Accordingly, the city need not release this information, which we have marked, in response to this request, and this ruling only addresses the availability of the remaining submitted information.² See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. You assert that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Section 402.083(a) of the Labor Code states that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Texas Workers’ Compensation Commission (the “commission”)] except as provided by this subtitle.” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), the City of Brownsville received a request for similar information. This office construed the predecessor to section 402.083(a) to apply only to information that the governmental body obtained from the Industrial Accident Board, now the commission. You have not informed us, and the documents do not reflect, that they were obtained from the commission. Therefore, the information at issue is not confidential under section 402.083, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the Texas Local Firefighters Retirement Act (“TLFRA”), article 6243e of Vernon’s Texas Civil Statutes, which provides in pertinent part:

Sec. 32. (a) Information contained in records that are in the custody of a retirement system established under this Act concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section [552.101 of the Government Code] and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual’s attorney, guardian, executor, administrator, conservator, or other person who the board of trustees of the retirement system determines is acting in the interest of the individual or the individual’s estate;

²Accordingly, we will not address your arguments against the disclosure of this non-responsive information.

(C) a spouse or former spouse of the individual if the board of trustees determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed under an authorization of the board of trustees that specifies the reason for the disclosure.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(c) A determination and disclosure under Subsection (a) of this section may be made without notice to the individual member, retiree, annuitant, or beneficiary.

Tex. Rev. Civ. Stat. art. 6243e, § 32. You state that the city's Fireman's Relief and Retirement Fund is an entity formed under the authority of TLFRA. We agree that the a portion of the submitted information is in the custody of the fund and is subject to section 32 of article 6243e. We conclude that only the submitted information that relates to and identifies an individual as a member, retiree, annuitant, or beneficiary in the retirement system is confidential under section 32(a). You do not indicate that any of the release provisions apply in this instance. Thus, you must withhold the information you have marked in the submitted information under section 552.101 of the Government Code in conjunction with section 32 of article 6243e of Vernon's Texas Civil Statutes.

Next, you claim that a portion of the remaining submitted information is protected by common law privacy. Section 552.101 also encompasses the doctrine of common law privacy, which 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has determined that financial information that relates 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 Open Records*

Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked the information that you must withhold under section 552.101 in conjunction with common law privacy. However, you have failed to explain how any of the remaining information constitutes highly intimate or embarrassing information for the purposes of common law privacy, and therefore none of the remaining information may be withheld on this basis.

Section 552.117 of the Government Code 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 timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee whose information is at issue elected to keep his personal information confidential prior to the date on which the city received this request. Therefore, you must withhold this information, which we have marked, pursuant to section 552.117(a)(1) of the Government Code.³

A portion of the remaining submitted information is subject to section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Thus, pursuant to this section, the city must withhold the account numbers we have marked. You fail to explain, however, how any of the remaining information constitutes an access device number for purposes of section 552.136. Accordingly, the city must only withhold the information we have marked pursuant to section 552.136 of the Government Code.

In summary, the city must withhold (1) the information we have marked under section 552.101 in conjunction with section 32 of article 6243e of Vernon's Texas Civil Statutes,

³ As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

(2) the information we have marked under section 552.101 in conjunction with common law privacy, (3) the information we have marked under section 552.117 of the Government Code, and (4) the account numbers we have marked pursuant to section 552.136. The remaining responsive 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, 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,

A handwritten signature in cursive script that reads "Anne Prentice".

Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 252053

Enc. Submitted documents

c: Mr. Murray Moore
2912 Red Gum Gap
Longview, Texas 75605
(w/o enclosures)