



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2007

Mr. Denis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-15216

Dear Mr. McElroy:

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# 294939.

The City of Fort Worth (the "city") received a request for all documents related to the requestor's discrimination complaint. You state you will provide the requestor with most of the requested information. You also state that the city will withhold certain Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See Gov't Code* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, you state that the city has redacted social security numbers pursuant to section 552.147 of the Government Code. *See Gov't Code* § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.130, and 552.136 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 (interested party may submit comments stating why 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." *Gov't Code* § 552.101. This section encompasses information made confidential by other statutes. Section 552.101 encompasses

section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 “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 submitted I-9 form under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we agree that the I-9 form you have submitted as Exhibit C1 is confidential under section 552.101 of the Government Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Next, section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. Prior decisions of this office have found that financial information relating only 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. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee’s allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See* Open Records Decision No. 545 (1990). 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 (1992). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). You assert that portions of Exhibits C2 and C3 are protected by common-law privacy. We have reviewed these Exhibits and agree that some of the information is protected under common-law privacy; therefore, the city must withhold Exhibit C3 in its entirety and the information we have marked in Exhibit C2 under section 552.101 of the Government Code. We find, however, that none of the remaining information in Exhibit C2 constitutes highly intimate or embarrassing information of no legitimate concern to the public. Therefore, the city may not withhold any of the remaining information in Exhibit C2 under section 552.101 in conjunction with common-law privacy.

Next, you contend that a portion of Exhibit C4 is subject to section 552.130 of the Government Code. Section 552.130 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 [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code

§ 552.130. Accordingly, the city must withhold the Texas driver's license information you have marked in Exhibit C4 pursuant to section 552.130 of the Government Code.

Finally, you claim a portion of Exhibit C5 is excepted under section 552.136 of the Government Code, which 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. Exhibit C5 contains bank account numbers. The city must, therefore, withhold the bank account numbers that you have marked in Exhibit C5 under section 552.136.

In summary, the city must withhold: Exhibit C1 under section 552.101 in conjunction with section 1324a of title 8 of the United States Code; Exhibit C3 and the information we have marked in Exhibit C2 under section 552.101 in conjunction with common-law privacy; the information you have marked in Exhibit C4 under section 552.130; and the information you have marked in Exhibit C5 under section 552.136. The remaining 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 294939

Enc. Submitted documents

c: Mr. Walter Mitchell
3300 Chalmette Court
Fort Worth, Texas 76140
(w/o enclosures)