



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2008-05553

Dear Ms. Byles:

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# 308297.

The City of Fort Worth (the "city") received a request for merit increases and waiver requests for the city's planning department during a specified time period, as well as information pertaining to "planning positions that were open from October 2007."<sup>1</sup> You state that you have released some of the requested information. You further state that the city will redact 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 submitted information are excepted from disclosure under

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<sup>1</sup>We note that the requestor made her request for information on January 8, 2008; however, you explain that the city required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code, and that, on February 6, 2008, the requestor submitted the deposit. See Gov't Code 552.263 (e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Thus, we agree that February 6, 2008 is the date the city received this specific request for information.

sections 552.101, 552.117 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps)*. This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See Open Records Decision No. 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, protected under common-law privacy)*. We have marked information that the city must withhold under section 552.101 in conjunction with common-law privacy.

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 request that this information be kept confidential under section 552.024. *See Gov't Code § 552.117*. Additionally, section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *See Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with 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 on behalf of current or former officials or employees 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 case you inform us, and provide documentation showing, that the employees whose personal information is at issue timely elected confidentiality under section 552.024. However, we note that the submitted information indicates that one of the individuals at issue did not elect to withhold her family

member information; thus this individual's family information may not be withheld pursuant to section 552.117(a)(1). Accordingly, we determine that the city must withhold the personal information we have marked under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. *Id.* § 552.137. We have marked the e-mail addresses in the submitted documents that are within the scope of section 552.137(a). Unless the city has received affirmative consent to disclose the e-mail addresses we have marked, the city must withhold this information under section 552.137 of the Government Code.

We note that some of the remaining information that is protected under section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information that we have marked under section 552.117(a)(1) of the Government Code. The city must also withhold the information we have marked under section 552.130 of the Government Code, and the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses have consented to their disclosure. 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 file suit in

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<sup>2</sup>Unlike other exceptions to disclosure, this office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception to disclosure and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 308297

Enc. Submitted documents

c: Ms. Michelle Williams  
3328 Chalmette Court  
Forest Hill, Texas 76140  
(w/o enclosures)