



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2008

Mr. Loren B. Smith
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2008-05960

Dear Mr. Smith:

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# 307601.

The City of Alvin (the "city") received a request for several categories of information pertaining to the garnishment of a specified city council member's wages. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 present request seeks information pertaining to the garnishment of a specified city council member's wages as a result of the individual's default on a student loan. In Open Records Decision No. 480 (1987), this office considered whether or not information regarding individuals who defaulted on student loans was purely personal financial information protected under a right of privacy. See Open Records Decision No. 480. In that decision, we determined that because the student loans at issue were backed by public funds, the public had a legitimate interest in information pertaining to the default of the loans, given the fact that public funds were directly involved. *Id.* at 4. We concluded

that a right of privacy did not protect the student loan information, as the public nature of the transactions required the conclusion that whatever privacy interests were implicated by the information were outweighed by the public's right to be apprised of the manner in which its funds were being handled. *Id.* at 5

The issue presented in this case, then, is whether the specified council member defaulted on a public student loan or a private student loan, as the answer to that question reveals whether or not the loan transaction involved public funds in a financial transaction between an individual and a governmental body. We determined that additional information was required to render a decision in this instance, and we provided written notice of this determination to both the city and the requestor pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(b), (c). On April 15, 2008, this office requested that you provide us with "an explanation of whether the wages of the city council member at issue have been garnished based on the default of a *private* or *public* student loan." On April 22, 2008, you responded by stating that the lender is a private, non-profit corporation. You also assert that the city "is not aware of any evidence that the loan in question was part of any federal or otherwise public funding program" and that "it would appear that the loan was a private loan." It appears from your representations that you believe that because the lender in this case is a private corporation, you assume that the loan at issue must be a private loan. However, you also included information from the lender's website which suggests that the lender services both private and federal student loans, and that the lender "has grown to become the nation's largest guarantor of loans made under the Federal Family Education Loan Program, the largest federal source of financial aid for higher education." Upon review, we find that you have not provided any evidence to conclude that the loan at issue was a private student loan in order to be withheld on privacy grounds. *See id.* § 552.301(e)(1)(A) (providing that it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released); *see also* Open Records Decision No. 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). As such, we conclude that none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

We note that some of the submitted information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) on behalf of a current or former official

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the specified council member timely elected to keep her personal information confidential, the city must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The city may not withhold the information we have marked under section 552.117(a)(1) if the council member did not make a timely election to keep her personal information confidential.

We also note that some of the submitted information is subject to section 552.136 of the Government Code, which provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We have marked the bank account and routing numbers that must be withheld under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the council member timely elected to keep her personal information confidential.² The city must also withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. 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

²Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 307601

Enc. Submitted documents

c: Mr. Gary Appelt
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(w/o enclosures)