



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2008

Mr. David M. Berman
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2008-08465

Dear Mr. Berman:

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# 314744.

The City of Rowlett (the "city"), which you represent, received a request for seven specified categories of information, including values of sick-leave accrual, vacation accrual, injury-leave pay, costs to implement chapter 143 of the Local Government Code, and a roster of police and fire employees. 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 representative sample of information.¹ 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).

Initially, you inform us that you have only submitted information responsive to the fifth category of information in the request. We assume that, to the extent any additional responsive information pertaining to the other requested categories of information existed

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section 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 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 Open Records Decision No. 470 (1987), this office determined that, although the fact that a public employee is sick is public, specific information about illnesses is excepted from disclosure under common-law privacy. Open Records Decision No. 470 at 4; *see* Open Records Decision No. 455 at 9 (1987) (information regarding applicants' illnesses or operations and physical handicaps is intimate personal information). Prior decisions of this office have also 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 id.* Nos. 600 (1992), 545 (1990), 373 (1983).

The submitted information pertains to workers' compensation claims, including (1) the names of employees who have made such claims, (2) the amount of leave taken, and (3) the total amount of payments made by the city to the employees pursuant to those claims. You assert that this information is private because it consists of medical information and that it "will enable third persons to identify which employees received money while on injury leave and how much each received." However, the Texas Supreme Court has determined there is nothing intimate or embarrassing about the fact that, in and of itself, an individual has filed a claim for workers' compensation. *Indus. Found.*, 540 S.W.2d at 686. In addition, this office has determined that the names of employees taking sick leave and the dates of sick leave taken are not confidential under common-law privacy. Open Records Decision No. 336 at 2 (1982). Therefore, the submitted information that reveals the amount of time that employees take off for injuries and the amount of money paid to those employees is not intimate or embarrassing, and it is of legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 686; Open Records Decision No. 336 at 2 (1982). The submitted information also does not reveal the medical nature of the injury sustained by an employee or any other private facts pertaining to the employees. *See* ORD 470 at 4. Therefore, we conclude that the submitted information is not confidential under common-law privacy, and it may not be withheld under section 552.101 on that ground. Instead, the submitted information must be released to the requestor.

Finally, we note that section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase software or hardware. *See Gov't Code* § 552.228(b)(1), (2). Accordingly, if the city has the technological capability to provide the information at issue in the requested electronic format, it must do so; however, if the city does not have the technological capability, it may release the information at issue in the submitted paper format or in another medium acceptable to the requestor. *See Gov't Code* 552.228(c).

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 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). If the governmental body does not file suit over 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).

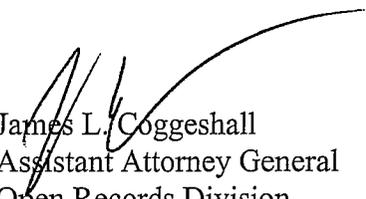
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 314744

Enc. Submitted documents

c: Ms. Darlene Lanham
Texas Municipal Police Association
6200 La Clama Dr., Suite 200
Austin, Texas 78752
(w/o enclosures)