



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 24, 2009

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-13479

Dear Ms. Valkavich:

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# 356263 (COSA File No. 09-0837).

The City of San Antonio (the "city") received a request for the department, job title, date of application, determination decision, and date of the determination decision for all civilian employees of the city who applied for long term disability in the past thirty-six months and, additionally, the plan documents for the city's long term disability plan for the past five years. We note that the requestor has specifically excluded the names of the city employees from his request. Accordingly, any names within the requested information are not responsive to the present request, and the city need not release that information in response to this request. 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.¹

Initially, we note you have not submitted plan documents for the city's long term disability plan for our review. To the extent any information responsive to this portion of the request

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

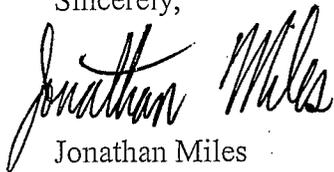
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication 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). This office has determined 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) (financial information not excepted from public disclosure by common-law privacy generally includes 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). Thus, a public employee's allocation of part of the employee's salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g.*, ORD 600 at 9-12 (details of employee's enrollment in a group insurance program, the designation of the beneficiary of an employee's retirement benefits, participation in TexFlex, and an employee's authorization of direct deposit of the employee's salary are protected by common-law privacy). You inform us that the submitted information pertains to a long-term disability benefits program in which participation was optional and in which the employee had to purchase long-term disability insurance to enroll. However, as we note above, the requestor has excluded employee names from his request. The submitted information, excluding the non-responsive employee names, would not identify the employees. Accordingly, none of the responsive submitted information is confidential under common-law privacy in conjunction with section 552.101 of the Government Code, and none of it may be withheld under that exception. As you make no further arguments, the responsive submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in dark ink and is positioned above the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 356263

Enc. Submitted documents

c: Requestor
(w/o enclosures)