



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Ms. Leticia Garza
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

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OR2010-05215

Dear Ms. Garza:

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# 375723 (City of Baytown PIR# 1646).

The City of Baytown (the "city") received a request for the job duties and recent salary information of a named employee. You state the city has released information relating to the named employee's job duties. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

You seek to withhold portions of the submitted information under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540

S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the city's section 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101.

In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate or 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 addition, this office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but 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 (1962) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

Upon review, we find that portions of the submitted information, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law right of privacy and under section 552.102 of the Government Code. As you raise no further exceptions, the remaining information must be released.

Finally, we note that the requestor stated he preferred to receive electronic copies of the requested information. 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 of 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 to the requestor 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 id.* § 552.228(c).

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 375723

Enc. Submitted documents

c: Requestor
(w/o enclosures)