



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2010

Ms. Bertha A. Ontiveros  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2010-06384

Dear Ms. Ontiveros:

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# 377938. This office also received a request for review of the redaction of certain information subject to Act. The request for review was assigned ID# 378478. We have combined these files and will consider the issues presented in this single ruling assigned ID# 377938.

The City of El Paso (the "city") received a request for six categories of information related to a city employee benefits program. You state you released some information to the requestor and informed him that certain information he requested does not exist. As permitted by section 552.024(c)(2) of the Government Code, you also redacted information you determined to be subject to section 552.117 of the Government Code without requesting a decision from this office. Pursuant to section 552.024(c-1), the requestor has asked this office to review the redacted information and render a decision as to whether this information is excepted from disclosure. Additionally, you claim all information at issue is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions claimed and reviewed all of the information at issue.

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 common-law right of privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus.*

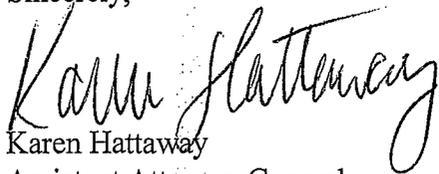
*Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. See Open Records Decision Nos. 600 (1992) (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).

The information at issue reveals the personal financial decisions of employees to enroll in an optional benefits program the city offers. Upon review, we agree this information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold this information from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not consider your additional arguments against disclosure under section 552.101 or the applicability of section 552.117 of the Government Code to this information.

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](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,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/eeg

Ref: ID# 377938

Enc. Submitted document

c: Requestor  
(w/o enclosures)