



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2010

Ms. Mariví Gambini
Paralegal
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2010-08135

Dear Ms. Gambini:

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# 381602.

The City of Irving (the "city") received a request for records showing what financial benefits two named individuals receive monthly from the city. You state the city will withhold some of the responsive information under section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.¹ You also state you have released some information to the requestor. You claim the submitted 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 information made confidential by statute. You assert Exhibit A is excepted from disclosure under section 552.101 in conjunction with

¹Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code §§ 552.117(a)(1), .024(c)(2) (if employee or official or former employee or official chooses not to allow public access to his or her personal information, the governmental body may redact the information without the necessity of requesting a decision from this office).

section 855.115 of the Government Code. Section 855.115(a) protects “[i]nformation contained in records that are in the custody of the [Texas Municipal Retirement System.]” In this instance, Exhibit A is held by the city rather than the Texas Municipal Retirement System. Therefore, we find that Exhibit A is not confidential under section 855.115 of the Government Code, and thus it may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses the doctrine of common-law 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).

Upon review, we find Exhibits B and C reveal the personal financial decisions of employees to enroll in an optional benefits program the city offers. We agree this information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold Exhibits B and C under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note Exhibit A contains information subject to section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected under 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). You state that one of the individuals at issue timely elected to keep his home address confidential. Thus, the city must withhold the information pertaining to this former employee, which we have marked, under section 552.117(a)(1) of the Government Code. We note the remaining information in Exhibit A contains the home address of another current or former city employee. To the extent this individual timely elected confidentiality, the city must withhold his home address, which we have marked,

pursuant to section 552.117(a)(1). To the extent the remaining employee did not make a timely election, his information may not be withheld on this basis.

In summary, the city must withhold Exhibits B and C under section 552.101 in conjunction with common-law privacy. The city must withhold the information we have marked in Exhibit A pursuant to section 552.117 of the Government Code to the extent it pertains to a current or former city employee who timely elected confidentiality. The remaining information must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 381602

Enc. Submitted documents

c: Requestor
(w/o enclosures)