



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2010

Ms. Bridget Chapman
Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2010-11679

Dear Ms. Chapman:

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# 389066.

The City of Georgetown (the "city") received two requests from the same requestor for certain payroll history information and W-2 and 1099 forms pertaining to a named member of the city council. You inform us that there is no responsive 1099 form.¹ You also inform us that the city is withholding the responsive W-2 form pursuant to the previous determination issued in Open Records Decision No. 684 (2009).² You claim that some of the information in the submitted payroll history report 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 information you submitted. We also have considered the comments we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²This office recently issued Open Records Decision No. 684, a previous determination authorizing all governmental bodies to withhold ten categories of information, including a W-2 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, without the necessity of requesting an attorney general decision.

We first note that the requestor specifically seeks access to the portion of the submitted payroll history report that pertains to a particular paycheck. Therefore, the portions of the report that pertain to other paychecks and the totals for all checks are not responsive to these requests. This decision is applicable only to the responsive portions of the submitted report, which we have marked. This decision does not address the public availability of the rest of the submitted information, which need not be released in response to these requests.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Section 552.102 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[.]” Gov’t Code § 552.102(a). This exception protects information pertaining to public officials and employees. As you correctly note, the privacy analysis under section 552.102(a) is the same as the two-part test for common-law privacy under section 552.101 and *Industrial Foundation*. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (addressing statutory predecessor to Gov’t Code § 552.102). Accordingly, we will address your privacy claim under section 552.101.

Common-law privacy encompasses certain types of personal financial information. 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) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be 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), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).*

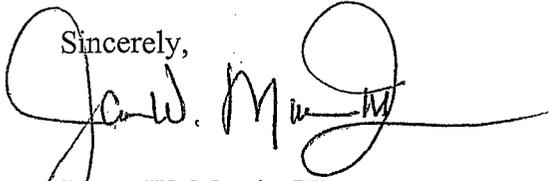
You claim that responsive portions of the submitted payroll history report are protected by common-law privacy. We note that the report lists the council member’s gross pay, her net pay, and her payroll deductions, including federal income tax. Ordinarily, only the council member’s net pay and the federal income tax deducted from her paycheck would be protected by common-law privacy. *See Attorney General Opinion GA-0572 at 4 (2007) (public employee’s net salary protected by common-law privacy).* In this instance, however, the requestor is already in possession of a copy of a payroll history report that reveals the

council member's net pay. Under these circumstances, withholding only the council member's net pay and the federal income tax deducted would result in the release of information with which the requestor could calculate the amount of federal tax withheld, thus revealing private information. We therefore conclude that, in this specific instance, the city must withhold both the council member's net pay and her payroll deductions in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked that information. The rest of the responsive 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 black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 389066

Enc: Submitted documents

c: Requestor
(w/o enclosures)