



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 8, 2010

Mr. Dick H. Gregg, Jr.
City Attorney
Gregg & Gregg, P.C.
For City of South Houston
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2010-15438

Dear Mr. Gregg:

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# 396432.

The City of South Houston (the "city"), which you represent, received a request for the city's payroll records from three to six months prior to the date of the request, including the payroll records of several named individuals. You state the city has released some of the requested information. You claim portions of the submitted information are 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 comments stating why information should or should not be released).

You raise both section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102 of the Government Code for the life insurance portions of the submitted information. Section 552.101 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 doctrine of common-law privacy. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis

under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *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). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has generally found there is a legitimate public interest in the essential facts about a transaction between an individual and a governmental body. Open Records Decision Nos. 545 (1990), 373 (1983). However, this office has also found that information pertaining to certain personal financial decisions is excepted from required public disclosure under 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).

You seek to withhold the life insurance portions of the submitted information under common-law privacy. We understand the city pays for basic life insurance coverage for all of its employees. Therefore, we find that to the extent the life insurance portions only reveal the basic life insurance coverage the city provides, there is a legitimate public interest in such information because it pertains to employees' receipt of public funds, and thus the information may not be withheld on the basis of common-law privacy. *See* ORD 545 at 4 (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). However, we also understand city employees may choose to purchase additional life insurance under the city's plan at their own expense. Therefore, we find deduction amounts that reflect an employee's decision to purchase additional life insurance beyond what the city provides are not of legitimate public interest. Accordingly, we conclude that to the extent the life insurance deduction amounts in the submitted information reveal the employees at issue have elected additional life insurance beyond what the city provides, the city must withhold this information under common-law privacy.

You also raise section 552.101 of the Government Code in conjunction with the doctrine of constitutional privacy for this information. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v.*

Roe, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

You generally state the life insurance information at issue "concerns to most intimate aspects of human affairs" and, therefore, is subject to constitutional privacy. However, you have not demonstrated, nor does our review of the submitted documents indicate, how any of the information at issue falls within the zones of privacy or implicates privacy interests for purposes of constitutional privacy. Thus, in the event the life insurance information at issue does not reveal additional life insurance coverage beyond what the city provides, none of this information may be withheld under section 552.101 in conjunction with constitutional privacy, and it must be released to the requestor.

In summary, to the extent the employees at issue have elected additional life insurance coverage beyond what the city provides, the city must withhold those amounts under common-law privacy. Any remaining 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 396432

Enc. Submitted documents

c: Requestor
(w/o enclosures)