



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Ms. Stephanie Galanides
City Secretary
City of Heath
200 Laurence Drive
Heath, Texas 75032

OR2010-16963

Dear Ms. Galanides:

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# 399433.

The City of Heath (the "city") received a request for a named individual's personnel file. You state the city is releasing some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (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. *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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 found that personal financial

¹Although you also raise section 552.305 of the Government Code, this section is not an exception to disclosure. See Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. See *id.*

information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note that this office has stated, in numerous decisions, that information pertaining to the work conduct, job performance, and qualifications of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (public employee's job performance does not generally constitute employee's private affairs), 455 (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find that the information we have marked in Exhibit 2 is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.117(a)(1) exempts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that these types of information be kept confidential under section 552.024. *See* Gov't Code §§ 552.117, .024. Section 552.117(a)(1) is applicable to an employee's personal cellular telephone number if the employee personally pays for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by a governmental body and intended for official use). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c), .024(c-2) (setting forth procedures by which the governmental body must provide the requestor with notice that it is redacting or withholding information pursuant to section 552.117(c)(2)). We note that the submitted information reveals that the employee at issue timely elected to keep her information confidential. Accordingly, the city may withhold the employee's personal information you have redacted in Exhibit 2 without seeking a decision from this office. Upon review, the city must also withhold the additional information we have marked in Exhibits 2 and 3, under section 552.117(a)(1) of the Government Code.

Section 552.130 exempts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license issued by an agency of this state [.]” *Id.* § 552.130(a)(1). We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including

Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Upon review, we agree that the city may withhold the Texas driver's license number you have redacted in Exhibit 2 pursuant to Open Records Decision No. 684, without seeking a decision from our office. We note that the driver's license class and expiration that you have marked is not subject to Open Records Decision No. 684 and may not be withheld without seeking a ruling from this office. However, upon review, we find the city must withhold the Texas driver's license class and expiration you have marked in Exhibit 2 under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(1) of the Government Code. The city must also withhold the Texas driver's license information you have marked in Exhibit 2 under section 552.130 of the Government Code. The 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 399433

Enc. Submitted documents

c: Requestor
(w/o enclosures)