



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2010

Ms. Natalie Banuelos  
Assistant City Attorney  
City of Fate  
6351 Preston Road, Suite 350  
Frisco, Texas 75034

OR2010-18716

Dear Ms. Natalie Banuelos:

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# 402875.

The City of Fate (the "city"), which you represent, received six requests for the annual base/gross pay, medical/dental/health annual costs to the city, medical/dental/health annual costs deducted from pay, 401K and employee retirement annual portion paid by the city, employee annual benefits/bonuses paid over and above annual base pay, annual taxing costs to the city, and annual taxing costs to the employee for the following positions: the municipal court clerk, code compliance/animal control, building official, city secretary, finance director/manager, and city manager. You state you have released some information to the requestor. You state information responsive to the request for information relating to the position of municipal court clerk does not exist.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we address the requestor's contention that the city did not comply with the requirements of section 552.301 of the Government Code in requesting a decision from this

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

office. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold pursuant to an exception to disclosure under the Act must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). The city received the initial request on September 9, 2010. However, the city states, and the requestor acknowledges, the city requested clarification of the request on September 22, 2010. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). Additionally, the requestor acknowledges, and the submitted documents show, she responded to the request for clarification on September 23, 2010. We have no indication that the city did not act in good faith in seeking clarification of the request. Therefore, based on the submitted documentation, we consider the city's ten-day-deadline for requesting a decision under section 552.301 to have begun on September 23, 2010, the date the city received the requestor's clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, the city's ten-business day deadline was October 7, 2010. Thus, as we received the city's request for a decision on October 7, 2010, we find the city fully complied with the requirements of section 552.301 of the Government Code in requesting this decision. Accordingly, we will consider your claimed exceptions.

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. This section encompasses the doctrine of common-law privacy, which 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) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure 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. 540 S.W.2d at 685. 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 information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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 state that the information you have marked in the submitted payroll information consists of information related to employee payroll deductions for federal tax withholdings, authorized

direct deposit deductions, and optional insurance coverage. Upon review, we find the information you have marked and the additional information we have marked constitutes personal financial information not relating to a transaction between an individual and a governmental body. Thus, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

Section 552.117(a)(1) of the Government Code excepts 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 this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You inform us four of the employees at issue timely elected confidentiality under section 552.024. Accordingly, the city must withhold these employees' social security numbers, which you have marked, under section 552.117(a)(1) of the Government Code.

You raise section 552.147 of the Government Code for the social security number of the remaining employee at issue, who we understand did not timely elect confidentiality under section 552.024. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The city may withhold the remaining employee's social security number, which you have marked, under section 552.147 of the Government Code.<sup>3</sup>

In summary, the city must withhold the marked personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the social security numbers of the employees who timely elected confidentiality under section 552.024 of the Government Code under section 552.117(a)(1) of the Government Code. The city may withhold the remaining employee's social security number under section 552.147 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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

<sup>3</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 402875

Enc: Submitted documents

c: Requestor  
(w/o enclosures)