



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2011

Ms. Doreen E. McGookey
General Counsel
Fort Worth Employees' Retirement Fund
3801 Hulen Street, Suite 101
Fort Worth, Texas 76107

OR2011-01474

Dear Ms. McGookey:

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# 407106.

The Fort Worth Employees' Retirement Fund (the "fund") received a request for information pertaining to fire department personnel "who are currently enrolled in the D.R.O.P. program" and their dates of enrollment. You claim that the requested 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. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *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 established. *Id.* at 681-82.

Prior decisions of this office have found that financial information relating to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an

individual and a governmental body. Open Records Decision Nos. 545 (1990), 373 (1983). Thus, a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about that decision is excepted from disclosure by common-law privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1990) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. ORD 600. Thus, an employee's participation in a group pension or insurance plan funded by the governmental body is not excepted from disclosure under common-law privacy. *Id.*; Open Records Decision No. 480 (1987).

You explain that a City of Fort Worth employee who is eligible for retirement from the city receives a normal retirement benefit that equals a certain percentage of the employee's three highest years of salary. You further explain that an employee eligible for the normal city retirement may retire, continue to work, or elect to participate in the city's deferred retirement option program ("DROP").

You state that if the employee elects to participate in the DROP, the employee's retirement benefit is calculated as of the date of the DROP election, the retirement contributions are paid into the DROP account, and, when the employee retires, the accrued benefit in the DROP account will be paid to the employee. You state that an eligible employee is free to elect to participate in the DROP option, and we understand the election does not affect the amount of the city's contributions to the retirement plan.

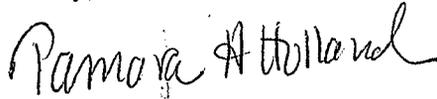
We find that an employee's choice of how he receives his retirement benefit, whether it be through the normal retirement scheme or the DROP option, is a personal financial decision that is protected by common-law privacy. Accordingly, we find that the fund must withhold the names we have marked under section 552.101 in conjunction with common-law privacy. We find, however, that the submitted information regarding dates of enrollment does not reveal DROP participants' identities. Furthermore, we find that the public has a legitimate interest in the DROP enrollment dates. Therefore, the fund may not withhold the dates of enrollment under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, this 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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tf

Ref: ID# 407106

Enc. Submitted documents

c: Requestor
(w/o enclosures)