



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, May 3, 2011

Mr. David Hamilton
City Attorney
City of Reno
3830 Farm Road 195
Paris, Texas 75462-3058

OR2011-06023

Dear Mr. Hamilton:

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# 416142.

The City of Reno (the "city"), which you represent, received a request for a named city employee's vacation request forms and related payroll records or check stubs from a specified time period. You claim the submitted information 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 submitted information.

Initially, you assert a portion of the responsive information is not maintained in the format specified by the requestor and to provide the responsive information in the requested format would require the manipulation of data. The Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). As you have made a good faith effort to relate the request to information held by the city and have identified the submitted information as responsive to the request, we will address your arguments for the submitted information.

Section 552.101 of the Government Code 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) 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 established. *Id.* at 681-82. However, information pertaining to the work conduct and job performance 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. 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under common-law right of privacy); see also Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 423 at 2 (1984) (scope of public employee privacy is narrow). Additionally, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision No. 600 at 9 (1992) (information revealing employee participates in group insurance plan funded partly or wholly by governmental body not excepted from disclosure); see also Open Decision Nos. 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common law privacy), 523 (1989). Furthermore, information pertaining to leave of public employees is generally a matter of legitimate public interest. Cf. Open Records Decision No. 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). Upon review, we find none of the submitted information is highly intimate or embarrassing and not of legitimate public interest, and the city may not withhold it under section 552.101 on the basis of common-law privacy.

You also claim the submitted information is excepted from disclosure under section 552.102(a) of the Government Code. Section 552.102(a) 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). Upon review, we find none of the submitted information is excepted under section 552.102(a) of the Government Code. Accordingly, none of the submitted information may be withheld on that basis.

We note a portion of the submitted information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) 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 this information be kept confidential under section 552.024 of the Government Code. See *id.* §§ 552.024, .117. Whether a particular item of information is protected by section 552.117(a)(1) must be

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Accordingly, to the extent the employee timely elected confidentiality, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employee did not timely elect confidentiality, the city may not withhold any of the information at issue under section 552.117(a)(1).² The city must release the remaining information.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 416142

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code, as noted above, 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).