



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2011

Ms. Rebecca Brewer  
Abernathy, Roeder, Boyd & Joplin, P.C.  
For City of Frisco  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2011-07758

Dear Ms. Brewer:

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# 419749.

The Frisco Police Department (the "department"), which you represent, received a request for "disciplinary records, payroll records [for a specified time period], all complaints filed against and all certifications of" a named officer. You state that some responsive information will be released to the requestor. You claim that 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.

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 information made confidential by other statutes. You assert that the submitted information is confidential under section 815.503(a) of the Government Code, which provides as follows:

- (a) Records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure, and the retirement system is not required to accept or comply with a request for

a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of [the Act], except as otherwise provided by this section.

*Id.* § 815.503(a). Section 815.503(b) provides in part that “[t]he retirement system may release the records . . . to another governmental entity having a legitimate need for the information to perform the purposes of the retirement system[.]” *Id.* § 815.503(b). Section 815.503(c) provides in part that “[t]he records of a member, annuitant, retiree, beneficiary, or alternate payee remain confidential after release to a person as authorized by this section.” *Id.* § 815.503(c).

You do not indicate to this office that the department maintains the submitted information as “an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system.” *Id.* § 815.503(a). We thus are unable to conclude that the information at issue constitutes “[r]ecords . . . that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system.” *Id.* Therefore, section 815.503 does not make the information at issue confidential, and none of it may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also 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.

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. 540 S.W.2d 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) (1990), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information).

Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. The department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find the department has not demonstrated any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. The department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

You claim the remaining information is excepted from disclosure under section 552.102 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 remaining information is excepted under section 552.102(a) of the Government Code. Accordingly, none of the remaining information may be withheld on that basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted information must be released to the requestor.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 419749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)