ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2011-11387

Dear Mr. Wallach:

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# 427175 (PIR No. W009213).

The City of Fort Worth (the "city") received a request for personnel information relating to a former city employee. You state most of the requested information either has been or will be released. You claim other responsive information is excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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. You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and 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 elements of the test must be established. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have

concluded common-law privacy encompasses certain types of personal financial information. Financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You have marked personal financial and other information the city contends is private. We find some of the marked information is a matter of legitimate public interest. *See* Open Records Decision Nos. 455 at 9 (1987) (employment applicant's salary information not private), 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private); *see also* Open Records Decision No. 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). Therefore, the former employee's salary and sick leave information, which we have marked, are not confidential under section 552.101 of the Government Code in conjunction with common-law privacy and must be released. We conclude the rest of the personal financial information you have marked is protected by common-law privacy under section 552.101, provided none of the marked information pertains to an employee benefit to which the city made a financial contribution.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). We conclude the information you have marked falls within the scope of section 552.102(a) of the Government Code.

We note section 552.117 of the Government Code is applicable to some of the remaining information.[1] Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a former employee of a governmental body who requests this information be

[1]This office will raise section 552.117 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

kept confidential under section 552.024 of the Government Code. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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 former 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 former employee who did not timely request confidentiality under section 552.024. We note you have redacted personal information relating to the former employee under section 552.024(c), which authorizes a governmental body to withhold information protected by section 552.117(a)(1) without the necessity of requesting a decision under the Act if the individual to whom the information pertains timely elects not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). We also note you have submitted a copy of the former employee's elections under section 552.024(a). Based on his elections, we have marked additional information that falls within the scope of section 552.117(a)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We have marked driver's license information that falls within the scope of section 552.130 of the Government Code.

We next note that, based on the language of her request, the requestor may be the former employee's authorized representative. As such, the requestor would have a right of access under section 552.023 of the Government Code to information the city would be required to withhold from the general public to protect the former employee's privacy. *See* Gov't Code § 552.023.[2] Along with common-law privacy under section 552.101 of the Government Code, sections 552.102(a), 552.117(a)(1), and 552.130 of the Government Code protect personal privacy. Thus, if the requestor is the former employee's authorized representative, then the city may not withhold the information encompassed by sections 552.101, 552.102(a), 552.117(a)(1), and 552.130 or the information the city has redacted under section 552.024(c)(2) of the Government Code and must release that information to the requestor. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). But if the requestor is not the former employee's authorized representative, then the city must withhold the information

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[2]Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

encompassed by sections 552.101, 552.102(a), 552.117(a)(1), and 552.130 and the information redacted under section 552.024(c)(2).[3]

Lastly, section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You have marked information relating to cellular telephone accounts the city seeks to withhold under section 552.136. You indicate the information at issue consists of the city's cellular telephone account numbers. Based on your representation, we conclude the city must withhold the marked information under section 552.136 of the Government Code.

In summary, (1) except for the salary and sick leave information we have marked for release, the information you have marked is confidential under section 552.101 of the Government Code in conjunction with common-law privacy, provided none of the marked information pertains to an employee benefit to which the city made a financial contribution; (2) the information you have marked under section 552.102(a) of the Government Code falls within the scope of that exception; (3) the information you have redacted under section 552.024(c)(2) of the Government Code and the information we have marked under section 552.117(a)(1) of the Government Code fall within the scope of section 552.117; and (4) the information we have marked under section 552.130 of the Government Code falls within the scope of that exception. The information encompassed by sections 552.101, 552.102(a), 552.117, and 552.130 and the information redacted under section 552.024(c)(2) must be released to the requestor under section 552.023 if she is the former employee's authorized representative but must be withheld if she is not. The city must withhold the information you have marked under section 552.136 of the Government Code. The city must release the rest of the submitted information.[4]

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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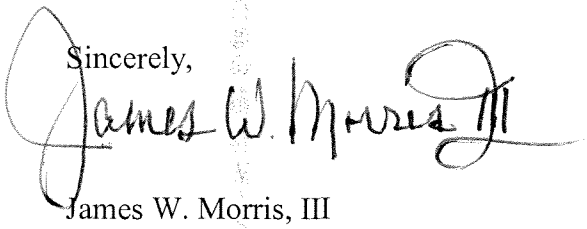
[3]We note you also have redacted the former employee's social security number under section 552.147(b) of the Government Code, which authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right to the former employee's social security number, however, if she is his authorized representative. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

[4]We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130 of the Government Code.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 427175

Enc: Submitted documents

c: Requestor
(w/o enclosures)