



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2011

Ms. Mariví Gambini  
Paralegal  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

OR2011-14089

Dear Ms. Gambini:

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# 431941.

The City of Irving (the "city") received a request for "employment and disability or retirement records" of a former city firefighter.<sup>1</sup> You indicate some responsive information will be made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). While the city raised section 552.101 of the Government Code within the ten-business-day time period as

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<sup>1</sup>We note the requestor excluded social security numbers and certain "privacy act data" from the request.

required by subsection 552.301(b), the city did not raise section 552.117 of the Government Code until after the ten-business-day deadline had passed.

Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Because section 552.117 can provide a compelling reason to overcome the presumption that arises under section 552.302, we will consider the applicability of section 552.117 to the information at issue along with your timely-raised claims under section 552.101.

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 exception 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.

This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and 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). Upon review, we find the submitted document is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we do not address your remaining claims.

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,

A handwritten signature in cursive script, appearing to read "C. Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 431941

Enc. Submitted documents

c: Requestor  
(w/o enclosures)