



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

Ms. Kim Sutter  
City Secretary  
City of Euless  
201 North Ector Drive  
Euless, Texas 76039

OR2011-17602

Dear Ms. Sutter:

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# 437492.

The City of Euless (the “city”) received a request for eight categories of information related to various city employees, officials, and expenses. We understand the city has released some responsive information with a driver’s license number redacted pursuant to section 552.130 of the Government Code.<sup>1</sup> We further understand the city does not have information responsive to a portion of the request.<sup>2</sup> You claim some of the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov’t Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22* (to be codified at Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22* (to be codified at Gov’t Code § 552.130(d), (e)).

<sup>2</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ *dism’d*); Open Records Decision No. 452 at 3 (1986).

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

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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find the information you have marked must be withheld under section 552.102(a) of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.<sup>3</sup> 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 current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024. *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)(1)). 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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. You state the employee whose information we marked timely requested confidentiality for this information under section 552.024. Thus, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government in conjunction with common-law privacy and the information you have marked under section 552.102(a) of the Government Code. The city must also withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 437492

Enc. Submitted documents

c: Requestor  
(w/o enclosures)