



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-18846

Dear Ms. Byles:

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# 441128 (PIR No. W012193).

The City of Fort Worth (the "city") received a request for e-mails between two named city employees and specified time sheets, each during a specified period of time. You state most of the requested information is being released to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the 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). Additionally, this office has found some kinds of medical information or information indicating disabilities or

specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information must be withheld on the basis of common-law privacy. Therefore, the submitted information may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. In the alternative, you claim the information you have marked should be withheld under common-law privacy. Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code exempts 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 requests that the information be kept confidential under section 552.024 of the Government Code. 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 the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only 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 have marked information in the remaining documents the city will redact under section 552.024, which authorizes a governmental body to redact from public release information subject to section 552.117 without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 1 (to be codified as an amendment to Gov't Code § 552.024). We have marked additional information the city must also withhold under section 552.117(a)(1), if the employee concerned timely elected to keep such information confidential under section 552.024.

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

of the Government Code, if the employees concerned timely elected to keep such information confidential under section 552.024 of the Government Code. The remaining 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, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 441128

Enc. Submitted documents

c: Requestor
(w/o enclosures)