



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Ms. Skye Masson
Legal Assistant
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2012-07599

Dear Ms. Masson:

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# 454538 (ORR 52).

The City of Georgetown (the "city") received a request for complaints that resulted in the termination of a city code enforcement officer. You claim the requested 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 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. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d 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 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).

As this office has explained on many occasions, information involving public officials and employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 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), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). In this instance, the information at issue pertains to a former employee of the city and her conduct as such. We find the public has a legitimate interest in this information. We therefore conclude the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim section 552.102(a) of the Government Code, which 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). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. The Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a), however, and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Supreme Court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. As the submitted information does not contain the former employee's birth date, the city may not withhold any of the submitted information under section 552.102(a) of the Government Code. Therefore, as no other exception is claimed, the city must release the submitted information in its entirety.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 454538

Enc: Submitted documents

c: Requestor
(w/o enclosures)