



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2012

Mr. B. Chase Griffith  
Counsel for the City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-16859

Dear Mr. Griffith:

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# 468440.

The City of McKinney (the "city"), which you represent, received a request for specified communications and the employment application and background information pertaining to a named applicant for employment with the McKinney Fire Department. You state you have released most of the responsive information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body ordinarily satisfies the first element of the common-law privacy test. *See Open Records Decision Nos. 600 at 9-12 (1992)* (identifying public and private portions of certain state personnel

records), 545 at 4 (1990) (attorney general has found information regarding receipt of governmental funds or debts owed to governmental entities is not excepted from public disclosure by common-law privacy), 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). We also have concluded a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Further, this office has found that information pertaining to the qualifications of an applicant for public employment is generally of legitimate public interest. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 at 2 (1982) (reasons for employee's resignation ordinarily not private). We find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. The city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and not of legitimate public interest, and it may not be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Upon review, the city must withhold the information we have marked under section 552.130 of the Government Code.

We note a portion of the remaining information is protected by section 552.136 of the Government Code.<sup>1</sup> Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, 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." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device number"). This office has determined an insurance policy number is an access device for purposes of section 552.136.

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<sup>1</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 city must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.130 and 552.136 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/tch

Ref: ID# 468440

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)