



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2012

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2012-17171

Dear Ms. Russell:

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# 469026.

The City of Southlake (the "city"), which you represent, received a request for nine categories of information pertaining to the job application of a named individual during a specified time period. You state the city will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You also state that pursuant to the previous determination in Open Records Decision No. 684 (2009), the city will redact Texas license plate numbers subject to section 552.130(b) of the Government Code, account numbers subject to section 552.136 of the Government Code, and e-mail address subject to

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

section 552.137 of the Government Code.² 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.

Initially, we note the city has not submitted information responsive to eight categories of the request for information. To the extent any information responsive to these portions of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Common-law privacy protects information that (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. 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. 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). Although references to the previous salaries of an applicant for public employment may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the applicant's employment qualifications and background. See Open Records Decision No. 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question").

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas license plate numbers under section 552.130, access device numbers under section 552.136, and e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

However, this office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* ORD 470 (illness from severe emotional and job-related stress), 455 (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find a portion of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.101 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.”³ Gov’t Code § 552.102(a). The Texas Supreme Court 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.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we have marked information that may be subject to section 552.102(a) of the Government Code. However, we are unable to determine whether applicant at issue is a city employee. Therefore, if the marked date of birth pertains to a city employee or official, it must be withheld under section 552.102(a) of the Government Code. Conversely, if the marked date of birth pertains to an individual who is not a city employee or official, it may not be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code 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. Gov’t Code § 552.117(a)(1). We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See id.* § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

in the hands of their employer); ORD 455 (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). 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 only be withheld under section 552.117(a)(1) on behalf of a current or former 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 or not later than the 14th day after the date on which the employee began employment with the city. *See* Gov't Code § 552.024(b). Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the information we have marked pertains to an applicant who was ultimately hired, the city must withhold such information under section 552.117(a)(1) if the individual at issue timely requested confidentiality under section 552.024. Conversely, if the individual whose information we have marked was not ultimately hired or did not timely request confidentiality under section 552.024, the city may not withhold his personal information under section 552.117(a)(1) of the Government Code.

The remaining information contains motor vehicle record information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked, as well as the additional information we have marked under section 552.130 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. If the marked date of birth pertains to a city employee or official, it must be withheld under section 552.102(a) of the Government Code. If the information we have marked pertains to an applicant who was ultimately hired, the city must withhold such information under section 552.117(a)(1) of the Government Code, if the individual at issue timely requested confidentiality under section 552.024 of the Government Code. The city must withhold the information it has marked, as well as the additional information we have marked, under section 552.130 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, 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 469206

Enc. Submitted documents

c: Requestor
(w/o enclosures)