



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2012

Ms. Michelle Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2012-17661

Dear Ms. Kretz:

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# 469943 (W019296-081012).

The City of Fort Worth (the "city") received a request for specified e-mails sent to or from a named individual for a specified time period.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 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. This exception encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

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<sup>1</sup>You note that the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has determined common-law privacy encompasses certain types of personal financial information. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 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), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, we note the fact that a public employee is sick is public information, but specific information about illnesses is excepted from disclosure. *See* Open Records Decision No. 470 at 4 (1987) (although fact that public employee is sick is public, specific information about illnesses is excepted from disclosure under section 552.101). However, information pertaining to leave of public employees is generally a matter of legitimate public interest. *See* Open Records Decision No. 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). Upon review, we agree the information you have marked, except where we have marked for release, is highly intimate or embarrassing and not a matter of legitimate public concern. However, you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern. Accordingly, except as we have marked for release, the city may withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

You have marked portions of the remaining information under section 552.117 of the Government Code. We note additional portions of the remaining information may be subject to section 552.117. 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 employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117(a)(1) encompasses an official's or employee's personal cellular telephone or pager number if the cellular telephone or pager service is not paid for by a governmental body. *See* Open Records Decision No. 506

at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). 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 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 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 information. 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. We agree most of the information you have marked is subject to section 552.117(a)(1). However, we note some of the information you have marked, which we have marked for release, does not constitute the personal information of city employees. Additionally, we find portions of the remaining information, which we have marked, may be subject to section 552.117(a)(1). Therefore, except for the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked, including the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body, under section 552.117(a)(1) if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses you have marked are not specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses you have marked under section 552.137, unless the owners of the addresses have affirmatively consented to their release.<sup>2</sup> *See id.* § 552.137(b).

In summary, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked, including the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body, under section 552.117(a)(1) if the individuals whose information is at issue timely requested confidentiality. The city must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information must be released.

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<sup>2</sup>Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 469943

Enc. Submitted documents

c: Requestor  
(w/o enclosures)