



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2012

Ms. Janis K. Hampton
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2012-18907

Dear Ms. Hampton:

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# 471770.

The City of Bryan (the "city") received a request for the number of city council members currently on the city's health insurance plan, the names of each council member on the city's health insurance plan, the name of the health insurance plan each council member is with, how much each council member pays for the plan, how much money each has received from the plan, and how much each pays to be on the health insurance plan. You claim the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). We also note you inform us the only information responsive to the requested number of city council members currently on the city's health insurance plan and names of each council member on the city's health insurance plan would be located in the types of information you submitted as a representative sample. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us the city received the request for information on September 4, 2012. Thus, the city's fifteen-business-day deadline to request a ruling was September 25, 2012. The city sent its request for a ruling to this office both by United States mail and by electronic submission pursuant to section 552.309 of the Government Code. *See* Gov't Code § 552.309(a); 1 T.A.C. § 63.22(a). However, the envelope containing the request for a ruling the city sent by United States mail is postmarked September 26, 2012. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). The city also submitted the request for a ruling by electronic submission on that same date. *See id.* § 552.309(a) (requirement to submit a document within a specified period under the Act is met in a timely fashion if it is submitted through the attorney general's designated electronic filing system within that period); 1 T.A.C. § 63.22(b) (government body's request for decision submitted electronically must comply with section 552.301 of the Government Code). Therefore, the city failed to comply with the procedural requirements mandated by section 552.301.

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Sections 552.101 and 552.117 can provide compelling reasons to overcome this presumption. Therefore, we will address your arguments under these exceptions.

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, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545

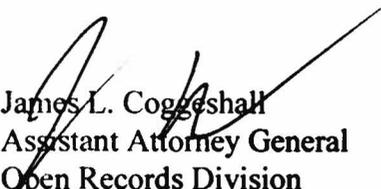
(1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See id.* (personal financial information includes designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See id.* at 10.

You explain the city provides health care coverage under the City of Bryan Group Health Plan (the "plan"), which is a self-insured plan, pursuant to the authority of chapter 172 of the Local Government Code. You state employees and elected officials of the city may elect to participate in the plan, but they may also elect to opt out of the plan. Although the city pays a portion of the premium of the plan for employees, you inform us the city does not pay any health insurance premium contributions for elected officials. Upon review, we find the submitted information consists of private financial information. Accordingly, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.²

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

²As our ruling is dispositive, we do not address your other argument to withhold this information.

Ref: ID# 471770

Enc. Submitted documents

c: Requestor
(w/o enclosures)