



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2012-19134

Dear Mr. Bounds:

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# 472191 (City File No. 677).

The City of Corpus Christi (the "city") received a request for nineteen categories of information pertaining to the benefits of a named city employee. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 section encompasses the common-law right to privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *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 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983). We find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. The city must generally withhold the marked information

under section 552.101 of the Government Code in conjunction with common-law privacy. We note the requestor, as a beneficiary listed in the submitted information, has a special right of access to information that pertains to her, and such information may not be withheld under section 552.101 in conjunction with common-law privacy. We find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor is the spouse of the individual to whom the marked information pertains and may be acting as his authorized representative. As such, the requestor may have a right of access to the information at issue under section 552.023 of the Government Code, which provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Thus, because common-law privacy protects personal privacy, the city may not withhold the information we have marked from the individual at issue or his authorized representative on that basis. Therefore, if the requestor is acting as her spouse’s authorized representative, she has a right of access to this information pursuant to section 552.023 of the Government Code, and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as her spouse’s authorized representative, the city must withhold the information we have marked 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.”¹ 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 a date of birth that the city must generally withhold under 552.102(a) of the Government Code. However, because section 552.102(a) protects personal privacy, the requestor, if she is acting as her spouse’s authorized representative, would have a special right of access to her spouse’s birth date. *See* Gov’t Code § 552.023(a); ORD No. 481 at 4. Accordingly, if the requestor is acting as her spouse’s authorized representative, the city may not withhold any portion of the remaining information under section 552.102 of the Government Code. However, if the requestor is not acting as her spouse’s personal representative, the city must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

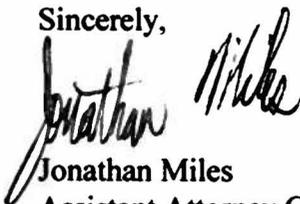
Section 552.136 of the Government Code provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). The city must generally withhold the account numbers we have marked under section 552.136 of the Government Code. We note, however, if the requestor is acting as the authorized representative of her spouse, to whom the bank account belongs, then she has a right of access to the information we have marked pursuant to section 552.023 of the Government Code, and the city must release this information to her. *See id.* § 552.023(b). If the requestor is not acting as her spouse’s authorized representative, the city must withhold the information we have marked under section 552.136.

In summary, to the extent the requestor is not acting as her spouse’s authorize representative, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, the date of birth we have marked under section 552.102 of the Government Code, and the bank account information we have marked under section 552.136 of the Government Code, and release the remaining information. If the requestor is acting as her spouse’s authorized representative, then the submitted information must be released to the requestor 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 472191

Enc. Submitted documents

c: Requestor
(w/o enclosures)