



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-00456

Dear Ms. Silver:

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# 475390.

The City of Dallas (the "city") received a request for all documentation and communications from a specified time period associated with an investigation of a named individual's employment with the city's Park and Recreation Department's after school program. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.148 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 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *Id.* at 683. However, information relating to public employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such

information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy. In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Accordingly, the city may not withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. You additionally argue that the portions of the submitted information you have highlighted in pink are subject to common-law privacy. However, upon review, we find none of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *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. To the extent the employees at issue made a timely election under section 552.024, the city must withhold the information you have highlighted in orange, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals whose information is at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining "access device"). The remaining information contains employee identification numbers. You inform us that an employee identification number is the same number used for the city credit union accounts plus one additional number. Thus, the city must withhold the employee identification numbers you have highlighted in blue under section 552.136 of the Government Code.

Section 552.148 of the Government Code provides the following:

- (a) In this section, "minor" means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:
 - (1) the name, age, home address, home telephone number, or social security number of the minor;
 - (2) a photograph of the minor; and
 - (3) the name of the minor's parent or legal guardian.

Id. § 552.148. We understand the information you have highlighted in yellow constitutes the names of minors who participate in the city's Parks and Recreation Department's after school program. You inform us that the information you have marked in red "tends to identify the participants in the recreational program." Based on your representations and our review, we find the submitted information relates to the participation by minors in a city recreational program or activity. Accordingly, the city must withhold the information you have highlighted in yellow pursuant to section 552.148 of the Government Code. However, upon review, we find none of the information you have marked in red consists of the name, home address, home telephone number, social security number, or photograph of a minor, or the name of a minor's parent or legal guardian. Accordingly, the city may not withhold the information you have marked in red under section 552.148 of the Government Code.

We note the requestor is a representative of the Office of Professional Responsibility of the Dallas Independent School District. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its

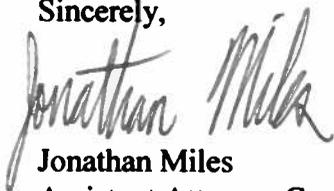
disclosure). Sections 552.117, 552.136, and 552.148 of the Government Code do not have specific release provisions governing public release of information. Therefore, pursuant to the intergovernmental transfer doctrine, the city has discretion to release the submitted information to the requestor.

In summary, to the extent the employees at issue made a timely election under section 552.024 of the Government Code, the city must withhold the information you have highlighted in orange, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The city must withhold the employee identification numbers you have highlighted in blue under section 552.136 of the Government Code. The city must withhold the information you have highlighted in yellow pursuant to section 552.148 of the Government Code. The remaining information must be released. However, the city may exercise its discretion to release the submitted information 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, 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# 475390

Enc. Submitted documents

c: Requestor
(w/o enclosures)