



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2013

Ms. Cheryl K. Byles
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2013-03532

Dear Ms. Byles:

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# 480083 (CFW PIR No. W022107).

The City of Fort Worth (the "city") received a request for a named city employee's e-mails maintained by the employee in a specified e-mail folder. You state a portion of the requested information is being released to the requestor. You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.136, and 552.139 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the

¹Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise that section based on your markings. Additionally, although you do not raise section 552.139 in your brief, we understand you to raise that section based on the substance of your arguments and your markings.

publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. The type of information considered intimate and 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. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. See 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). Upon review, we agree the information you have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

You assert the information you have marked is excepted from disclosure under section 552.139 of the Government Code. Section 552.139 provides that information is excepted from required public disclosure "if it is information that relates to computer network security, to restricted information under Section 2059.055, or to the design, operation, or defense of a computer network." Gov't Code § 552.139(a). You state the information you have marked consists of a city employee's code for using the Texas Law Enforcement Communication System and release of the marked information would compromise entry into the system. Upon review, we agree the information you have marked must be withheld under section 552.139 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you have marked under section 552.139 of the Government Code. The remaining information must be released.

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,

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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,

A handwritten signature in cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 480083

Enc. Submitted documents

c: Requestor
(w/o enclosures)