



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 1, 1998

Mr. Hugh W Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton St
Fort Worth, Texas 76102-6311

OR98-2077

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118249.

The City of Fort Worth (the "city") received a request for time and attendance records and payroll records for the week including April 28-30, 1998, for a certain city fire department employee. You advise that the city's fire and police departments operate under the civil service provisions of chapter 143, Local Government Code.

You ask first whether the fact that the city retains the requested information in both the individual's "civil service file" and in "the payroll section of Human Resources" makes the information confidential. As you note, Section 143.089(g) protects information in the "departmental file of a civil service employee." Open Records Decision No. 650 (1996). However, information in other personnel record files, whether they be the "personnel files" referred to in subsections (a) through (f) of section 143.089, or other files, may not be withheld from disclosure unless it falls within some other protected class of information, e.g. material covered by the common-law privacy aspects of Government Code sections 552.101 and 552.102. See e.g., Open Records Decision No. 562 (1990). In this instance, the requested information, since it is also located outside the file protected by the civil service provisions of section 143.089(g), must be disclosed unless otherwise protected.

You express concern that some of the requested information is private. Government Code section 552.101 requires withholding "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within common-law privacy. Information is protected by common-law privacy if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

An employee's personal financial information may be excepted from required public disclosure under the common-law privacy aspect of section 552.101. While this office has found that there is generally a legitimate public interest in essential facts about financial transactions between an individual and a governmental body such that there is no common law privacy protection, Open Records Decision No. 545 (1990) held that, absent special circumstances, there is no legitimate public interest in information reflecting a public employee's decision to participate in a deferred compensation plan. Such information is thus protected from disclosure by common-law privacy. Open Records Decision No. 545 at 4-5. Similarly, Open Records Decision No. 600 (1992) found that information pertaining to a public employee's designation of insurance or retirement beneficiaries, election of optional insurance coverage, decision to participate in a "Tex Flex" pre-tax compensation allocation plan, and choice of "direct deposit" handling of his paychecks, was private and excepted from disclosure. With respect to the kind of public employee information you ask about here, these prior decisions distinguish between information reflecting the employee's discretionary allocations of his pay, which is private, and information not reflecting employee discretion, which must be released.

We have reviewed the information at issue here. Some of the information in the deductions column of the payroll document you submitted may be private. You must, in accordance with the above discussion, redact information reflecting the employee's discretionary allocations of his pay.¹ The rest of the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

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¹You have not provided explanations of the entries on the payroll document you submitted. We are unable to determine whether some of them pertain to the employee's discretionary allocations of his pay, in which case they would be private, or reflect non-discretionary deductions, in which case they would be public.

Enclosures: Submitted documents

cc: Mr. S. Robinson
2214 Long Creek Court
Granbury, TX 76049
(w/o enclosures)