



June 14, 1999

Mr. William Chesser  
City Attorney  
City of Brownwood  
P.O. Box 1389  
Brownwood, Texas 76804

OR99-1651

Dear Mr. Chesser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124889.

The City of Brownwood (the “city”) received a request for, among other things, “[d]ates and reasons for any reprimands, disciplinary actions or public or internal complains, oral or written,” filed against a city employee. Pursuant to section 552.305(a) of the Government Code, you declined to release the submitted information involving a person’s privacy interest. We assume that you have released all of the other categories of requested information. The city employee whose privacy interest is involved claims that the allegations made against her are untrue and “extremely slanderous.” You claim that the requested 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.” Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The city employee whose records are at issue states that portions of the information are untrue and extremely slanderous.<sup>1</sup> This suggests that she believes that some of the information may be excepted from disclosure under the “false light” privacy doctrine. Since 1990, this office has held that “false light” privacy is not a proper consideration under the Public Information Act. Open Records Decision No. 579 (1990). Additionally, in *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994), the

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<sup>1</sup>This office cannot resolve questions of fact. Open Records Decision No. 554 (1990).

Texas Supreme Court concluded that Texas does not recognize the tort of “false light” invasion of privacy. Therefore, the city may not withhold the requested information under the doctrine of “false light” privacy.

Information may be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Indust. Found.* 540 S.W.2d at 685; Open Records Decision No. 611 at 1 (1992). This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members. *See* Open Records Decision No. 470 (1987). There is a legitimate public interest in the conduct of a public employee at work. The information concerning the city employee who objected to the release is not the kind of information that is protected from disclosure under constitutional or common-law privacy. However, among the documents submitted to this office is personal financial information about third parties. Information about the insurance coverage elected by an employee for her dependants and the identity of the beneficiary of her life insurance are excepted from disclosure by a common-law right of privacy. Open Records Decision No. 600 (1992). We have flagged the documents where this information is located, and marked the type of information to be withheld. In two instances, the documents are nearly illegible, and any markings would be illegible. Thus, for these two instances, we were unable to mark the information.

In addition, some of the requested material includes the home address, phone number, social security number and family information of a current or former city or employee. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, this specific information, depending on the specific circumstances, may not be released. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the home telephone number or social security number of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the

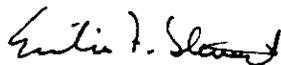
request for it is made. Open Records Decision No. 530 at 5 (1989).

Therefore, if the employee has elected to disallow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe that the city must withhold this information from required public disclosure pursuant to section 552.117. We have marked a sample of the kind of information that must be withheld if the official made the election to deny public access to the information.

The information you submitted to this office contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. You must release the information that is not marked under section 552.101, is not protected under section 552.117, or is not protected as social security information.

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.

Sincerely,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 124889

Encl: Submitted documents

cc: Mr. William W. Bell  
Attorney at Law  
P.O. Box 1726  
Brownwood, Texas 76804  
(w/o enclosures)