



August 18, 1999

Ms. Jocelyn La Bove
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR99-2334

Dear Ms. La Bove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126566.

The City of Houston (the "city") received a request from the United States Department of Labor (the "agency") for the name, home address, home telephone number, social security number, date of hire, salary, hourly breakdown, job title and non-exempt tenure of certain current and former city employees. You ask whether section 552.102 of the Government Code prohibits the city from disclosing the subject employees' personal addresses. The requested information also implicates section 552.117 of the Government Code. You have submitted information to this office for review, which you relate is responsive to this request. We have reviewed the submitted information and considered your arguments.

Section 552.102 of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common-law right of 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. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). None of the requested information meets this test. Therefore, section 552.102 does not except the information from disclosure.

Section 552.117 of the Government Code excepts from required public disclosure, the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024, and peace officers, irrespective of their election under section 552.024. Therefore, section 552.117 makes this information confidential if a current or former employee or official 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 this information of a current or former employee, other than a peace officer, 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).

The requestor here is a federal agency. This office has determined that the Public Information Act prohibits state agencies from transferring certain confidential information to other state agencies that are not authorized to obtain that information. Open Records Decision No. 516 (1989) (discussing Gov't Code §552.117 information). Moreover, Chapter 552 of the Government Code prohibits state agencies from disclosing confidential information to federal agencies unless some other law requires that disclosure. Open Records Decision No. 561 at 3 (1990). Thus, the responsive information that is made confidential by section 552.117 of the Government Code may be released to this requestor only if that release is specifically required or authorized by law.

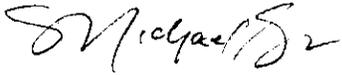
The city is subject to certain federal statutes and regulations governing employee records. The city must maintain, among other things, employee names and home addresses. 29 C. F. R. §516.2(a) (1998). Social security card numbers and home telephone numbers are not among the items specified for inclusion in these records. *Id.* The city must submit reports derived from the required employee records as requested by the agency. 29 C. F. R. §516.8 (1998). The city must also allow the agency access to those records on 72 hours notice by the agency. 29 C. F. R. §516.8 (1998). We also note that the city must prepare reports of retroactive wage payments on a form prescribed by a division of the requesting agency; such reports must be filed with the agency. 29 C. F. R. §516.2(b). The documents you submitted, titled "Summary of Unpaid Wages," are apparently such reports.

In conclusion, the city must determine which of the subject employees elected non-disclosure under section 552.024 of the Government Code prior to the date of the request, or are peace officers. The social security numbers and home telephone numbers of those individuals must be withheld. The remaining information must be released to this requestor.

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,

A handwritten signature in black ink, appearing to read "Michael Jay Burns". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126566

Encl: Submitted documents

cc: Mr. Michael Martin
USDL -Wage & Hour Division
South Building
9990 Richmond #202
Houston, Texas 77042-4546
(w/o enclosures)