



October 4, 1999

Mr. Mario M. Lewis
Attorney and Counselor
1220 Montana Avenue
El Paso, Texas 79902

OR99-2804

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128909.

The Region 19 Education Services Center (the "center"), which you represent, received a written request for twenty-six categories of information. You state that the center does not object to the release of most of the requested information, and that the center does not have information responsive to item 13, "correspondence related to the demotion and promotion of" a named center employee. You contend, however, that some of the requested information is excepted from required public disclosure pursuant to sections 552.102 and 552.117 of the Government Code.

Section 552.102(a) of the Government Code is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101 of the Government Code¹: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction therefor is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11. Similarly, this office has determined that information revealing the personal financial decision to have certain deductions made from an employee's paycheck meets the *Industrial Foundation* test. Open Records Decision No. 545 (1990). We agree that information revealing an employee's bank account and personal credit card numbers comes within the common-law right of privacy. We also agree that the information you have marked in Exhibits 3 and 5 implicates the privacy interests of the center's employees and thus must be withheld pursuant to section 552.102(a).

You also contend that the requested "employee appraisals" are excepted from public disclosure under section 552.102. Unlike the information discussed above, these performance evaluations pertain solely to the job performance of public servants, and as such cannot be deemed either to pertain to the employees' private affairs or to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect this type of information. Accordingly, the center must release the evaluations.

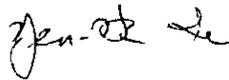
We also note that although you acknowledge that the center maintains two sets of records responsive to the request for "personnel documentation regarding any Region 19 employee," you have not submitted copies of those documents to this office because "[n]either of these concern the Requestor." Please note that the purpose of the current records request is not a factor in our consideration here. *See* Gov't Code § 552.223 (requiring uniform treatment of all requests). Furthermore, section 552.222(a) specifically forbids governmental bodies from making such inquiries of the requestor. Because you have not demonstrated that the "documentation" records are excepted from public disclosure, these records must be released.

Finally, we address your section 552.117 claims. Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The center must withhold the employees' home address, home telephone number, social security number, and family member information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to

the center's receipt of the current records request. Otherwise, these categories of 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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 128909

cc: Ms. Gail M. Prince
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(w/o enclosures)