



November 22, 1999

Mr. Lance Vanzant  
Hays, coffee & Berry, P.C.  
P.O. Box 50149  
Denton, Texas 76206

OR99-3354

Dear Mr. Vanzant:

You ask whether certain information is subject to required public disclosure under the Public Information Act, Chapter 522 of the Government Code. Your request was assigned ID # 131005.

The Town of Trophy Club (the "town"), which you represent, received an open records request for the personnel files of two town employees. You contend that portions of the requested information are excepted from public disclosure pursuant to sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the birth dates of the employees are excepted under section 552.102(a). Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information in personnel files only if the information meets the test articulated in section 552.101 for common-law privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). In order to be protected under common-law privacy, 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In Open Records Decision No. 455 (1987), this office concluded that an employee's birth date is not protected by common-law privacy. Thus, the town may not withhold the employees' birth dates under section 552.102(a.). You also contend that the information in Exhibit A-9 contains information excepted from disclosure under section 552.102(a). After reviewing this information, we find that lines four and five are not highly intimate or embarrassing facts about the employee's private affairs so as to be protected under common-law privacy. The remaining lines, however, are excepted from disclosure under section 552.117 of the Government Code as information revealing whether the employee has family members.

Section 552.117(1) excepts from disclosure information that relates to the home addresses, home telephone numbers, and social security numbers of employees of a governmental body who request that this information remain confidential under section 552.024. Section 552.117(1) also excepts information that reveals whether an employee has family members. You have submitted to this office information that demonstrates that, prior to the date on which the town received the requests for information, the town employees elected to keep their home addresses, home telephone numbers, social security numbers and family membership confidential. Thus, section 552.117 excepts the town employees' home addresses, home telephone numbers, social security numbers, and family information from disclosure, and the town must withhold this information on the employees' behalf. We have marked additional information that the town must withhold under section 552.117.

Section 552.130(a)(1) of the Government Code requires that the town withhold information that relates to a driver's license. Thus, the town must withhold the employee's driver's license number in Exhibit A-2 pursuant to section 552.130(a)(1). Exhibit A-2 also contains an 8-Digit Lucky number which is not excepted under section 552.117 and does not appear to be protected by common-law privacy. Thus, the lucky number must be released.

We note that Exhibits A-8 and A-12 contain information about payroll deductions for insurance, federal shelter, pre-tax contributions, and deferred compensation. An employee's allocation of salary to optional programs, which are not funded by the governmental body, are excepted from disclosure under common-law privacy. Open Records Decision No. 600 (1992). To the extent that the programs are optional programs which are not funded by the governmental body, an employee's decision whether or not to participate in the programs is private and must be withheld from disclosure. Except as discussed, all remaining information in the personnel files 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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/cwt

Ref: ID# 131005

Encl. Submitted documents

cc: Ms. Carolyn Jaska  
5 Salida  
Trophy Club, Texas 76262  
(w/o enclosures)