



March 14, 2000

Ms. Sheila I. Jalufka
Barney L. Knight & Associates
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2000-1004

Dear Ms. Jalufka:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "act"). Your request was assigned ID# 132948.

The City of Holland (the "city"), which you represent, received a request for applications for city secretary, minutes from a meeting on December 20, 1999, and the application of the police chief. In a subsequent request, the requestor asked for the personnel file of the former city secretary and all documents pertaining to the resignation of the city secretary. You assert that minutes from the December 20 meeting have been released and that documents pertaining to the secretary's resignation will be provided to the requestor. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information and the representative sample of applications for the position of city secretary.²

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of

¹You assert, that given intervening city holidays, ten business days have not elapsed since the first request. Because we are unaware of the holidays the city observes, we advise that the city provide this office the dates of city holidays. Failure to provide the dates of city holidays could result in a determination that the city has violated section 552.301. *See* Gov't Code § 552.301(a).

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, we will address whether section 552.101 applies to the requested information.³

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses common law and constitutional privacy. Common law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public 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. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

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

³We note that Exhibit 3 contains applications for the position of city secretary and is not subject to section 552.102. However, section 552.101 applies to information in the applications and, therefore, we will address Exhibit 3 along with the information in the personnel files.

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).

After reviewing the submitted information, we have marked the medical information in Exhibit 3 which is protected by common law privacy and must be withheld under section 552.101. The remaining medical information in Exhibits 2 and 3 is not protected from disclosure by sections 552.101 and 552.102.

Upon review, we have found that some of the submitted information contains financial information. In Open Records Decision No. 373 (1983), this office concluded that

all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

ORD No. 373 at 3 (1983). Prior decisions of this office have found that financial information relating to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 545 (1990), 373 (1983). A public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. Open Records Decision No. 545 (deferred compensation plan). Information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. Open Records Decision No. 600 at 10 (1992). For example, this office has held that an employee's participation in the Texas Municipal Retirement System or in a group insurance plan funded by the governmental body is not excepted from disclosure under common law privacy. *Id.*, Open Records Decision No. 480 (1987).

Having reviewed the information, we find that Sections F & G of the applications in Exhibits 2 and 3 contain personal financial information, such as personal financial obligations and history, which is protected by common law privacy. Further, Exhibit 4 contains a refund

application for the distribution of retirement funds. Because the application provides alternatives for distribution of the funds, we conclude that the election portion of the application constitutes personal financial information and is protected under common law privacy. We have marked the personal financial information which must be withheld under sections 552.101 and 552.102. Having reviewed the submitted information, we conclude that the remaining information, including information in Exhibit 3 concerning the applicant's marital and family history, is not protected by common law privacy.

We note that Exhibit 4 contains W-4 forms. Section 552.101 also excepts from disclosure information protected by other statutes. Section 6103(a) of title 26 of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (M.D.N.C. 1989). Our office has specifically held that W-4 Forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold the submitted W-4 Forms in Exhibit 4.

Exhibit 4 also contains an I-9 form. Release of eligibility verification form I-9 is governed by section 1324a of title 8 of the United States Code. This statute provides that I-9 forms "may not be used for purposes other than for enforcement of [the immigration laws of] this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the act would not be for a permitted purpose; therefore, we conclude that the I-9 forms are confidential and must be withheld under section 552.101 of the Government Code.

You assert that section 552.117(2) excepts from disclosure information in the application of the chief of police. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. We have marked the information in Exhibit 2 which you must withhold under section 552.117(2) of the Government Code.

We note that section 552.117(1) excepts from disclosure information that relates to the home addresses, home telephone numbers, and social security numbers and family information of current and former employees of a governmental body who request that this information remain confidential in accordance with section 552.024 of the Government Code. However, you have not submitted evidence that the former city secretary elected to have the city withhold her personal information in accordance with section 552.024. Further, section 552.117(1) does not apply to applicants for government jobs. *See* Open Records Decision No. 455 (1987). Therefore, section 552.117 information may not be withheld for the former city secretary or the applicants.

Although section 552.117(1) does not apply to Exhibits 3 and 4, social security numbers 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.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that the number was not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

You also ask whether you must withhold driver's license numbers in the submitted information. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must withhold driver's license numbers. We have marked the information that you must withhold under section 552.130(a) of the Government Code.

In conclusion, we have marked medical and financial information which is protected by common law privacy. We have also marked W-4 and I-9 forms which must be withheld from disclosure. Further, we have marked information which must be withheld under sections 552.117 and 552.130. The city must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

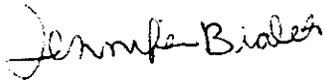
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 132948

Encl. Marked documents

cc: Ms. Gladys Dantzler
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(w/o enclosures)