Office of the Attorney General · State of Texas
JOHN CORNYN

March 13, 2001

Mr. Jonathan W. Needle
General Counsel
Houston Firefighters' Relief and Retirement Fund
602 Sawyer, Suite 650
Houston, Texas 77007-7524

OR2001-0967

Dear Mr. Needle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145014.

The Houston Firefighters' Relief and Retirement Fund (the "fund") received a request for several categories of information, including documents related to American Express and MasterCard accounts under the fund's control. You claim that individual account numbers noted on these documents must be excepted from required public disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We assume that you have released the remaining requested information. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section 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). Information is excepted from required public disclosure by a common law right of privacy if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d 668. This office has previously held that an individual's personal financial information may be protected by common law privacy. *See generally* Open Records Decision No. 600 at 9-12 (1992). An individual's credit card number is information that is highly intimate and of no legitimate interest to the public. *See* Open Records Decision No. 373 (1983). The fund must

withhold the credit card numbers pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy. Because section 552.101 is dispositive, we need not address the applicability of section 552.102.

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).

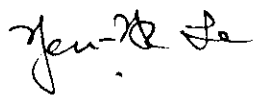
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rjb/seg

Ref: ID# 145014

Encl. Submitted documents

cc: Mr. Jarvis Butler
President
Houston Black Professional Firefighters
4101 San Jacinto, Suite 229
Houston, Texas 77004
(w/o enclosures)