



April 12, 2001

Ms. Kathleen Finck Watel
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-1461

Dear Ms. Watel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145913.

The City of San Antonio (the "city") received three requests for the beneficiary designations made by a deceased city employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that the requests also ask the city to provide the amount of life insurance benefits to be paid, to advise of any additional benefits that may be paid, to provide an itemization of the premiums paid by the deceased employee or withheld from his salary from May 20, 1998, to December of 2000, and to provide the necessary claim forms. As you did not submit this information for our review, nor indicate that you seek to withhold it, we assume that you have released any of this information in your possession to the requestor. If you have not released this information, and you have such information in your actual or constructive possession, you must release it to the requestor at this time.¹ See Gov't Code §§ 552.301(a), .302.

Next, we address your assertion that the submitted information is excepted under sections 552.101 and 552.102. The test to determine whether information is private and excepted from disclosure under common law privacy provisions, which are encompassed in sections 552.101 and 552.102 of the Government Code, is whether the information is (1)

¹ We note that a governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990).

highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). Because an individual's common law privacy rights lapse upon the death of the individual, Open Records Decision No. 272 (1981), the submitted information may not be withheld on the basis of the deceased employee's common law privacy interests. However, the beneficiaries have a common law right of privacy in the financial information at issue. Open Records Decision No. 373 at 3 (1983) (financial information about an individual may implicate privacy interests). Thus, you must de-identify the submitted documents by removing the names of the beneficiaries and any other identifying information about the beneficiaries. Here, however, one of the requestors may have a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise private because one of the requestors may be representing a beneficiary. Gov't Code § 552.023 (person has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). We have marked the beneficiary information that you must withhold under section 552.101, as well as the beneficiary information that you must release only to the requestor with a special right of access under section 552.023 if the requestor is actually representing the marked beneficiary.

We note that the submitted documents contain the deceased employee's social security number, home address, home telephone number, and family member information. Section 552.117(2) of the Government Code 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 regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In our opinion, however, section 552.117 information pertaining to a deceased peace officer would not be protected under section 552.117(2). Section 552.117(2) does not apply to former peace officers. Moreover, Section 552.117(4) only applies to officers killed in the line of duty. However, section 552.117 information pertaining to a deceased individual who is a former official or employee of a governmental body would be protected under section 552.117(1), the coverage of which includes "current and *former*" officials or employees who request that this information be kept confidential under section 552.024 (emphasis added). Therefore, if the deceased employee made an election under section 552.024 to keep his section 552.117 information confidential, the city must withhold his home address, home telephone number, social security number, and family member information, as marked.

Finally, we note that this decision only addresses whether the requested information is subject to required public disclosure under the Public Information Act. It does not address whether either of the requestors is entitled to receive the requested information as next of kin and likely beneficiary of the benefits payable on behalf of the deceased employee or as the personal representative of the deceased employee's estate.

To summarize, the city must: (1) release to the requestors any responsive information in its possession that it did not submit to this office for review; (2) withhold the information identifying the deceased employee's designated beneficiaries, as marked; (3) release the beneficiary information only to the requestor with a special right of access under section 552.023 if the requestor is actually representing the marked beneficiary; and (4) if the deceased employee made an election under section 552.024, withhold his home address, home telephone number, social security number, and family member information under section 552.117(1), as marked.

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).

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/

Ref: ID# 145913

Encl: Marked documents

cc: Ms. Stephanie Strolle
Les Mendelsohn & Associates, P.C.
110 Broadway, Suite 500
San Antonio, Texas 78205
(w/o enclosures)

Mr. Robert David Nalbach
Law Offices of Maloney & Maloney, P.C.
2000 Milam Building
115 East Travis Street
San Antonio, Texas 78205-1697
(w/o enclosures)