



April 17, 2001

Ms. Trudi Dill
Deputy City Attorney
City of Temple
Municipal Building
Temple Texas 760501

OR2001-1516

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146094.

The City of Temple (the "city") received a request for the following items of information related to the computation of retirement benefits:

1. the date that an identified individual entered the Deferred Retirement Option Plan ("DROP") program;
2. the date of the last paycheck of the identified individual that was used in computing pension benefits from the Temple Fireman's Relief Retirement Fund (the "fund");
3. the paycheck stub information from the last regular paycheck before the named individual entered the DROP program; and
4. the paycheck stub information from the first paycheck after the named individual entered the DROP program.

You have submitted an Application for Optional Retirement Benefits, identified as exhibit B, and portions of excerpts from two of the city's payroll registers, identified as exhibits D and E. As we understand your argument, you contend that the exhibit B and the pay period dates, and "two types of deductions" on exhibits D and E are excepted from disclosure under sections 552.102 and 552.117 of the Government Code. The requestor has also provided comment. *See* Gov't Code § 552.304. We have reviewed the submitted comments and information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Texas Local Firefighters Retirement Act, article 6243e of Vernon's Texas Civil Statutes ("TLFRA") provides, in pertinent part:

Sec. 32. (a) Information contained in records that are in the custody of a retirement system established under this Act concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section [552.101 of the Government Code] and may not be disclosed in a form identifiable with a specific individual[.]

This statute provides several release provisions, none of which applies here. You explain that the city holds the responsive information because it maintains records and performs administrative services for the fund. We understand your position to be that the fund is a retirement fund established under the TLFRA. We find that exhibit B is a record in the custody of the fund and is therefore made confidential by TLFRA. However, exhibits D and E are information from check registers in the possession of the city acting in its general capacity rather than as custodian of records of the fund. We find that this check register information is not made confidential by TLFRA. You argue that the dates of these instruments would reveal information that is confidential in the hands of TLFRA. However, information is not made confidential on the basis that a requestor can deduce otherwise protected information from it. *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex.1995). Only exhibit B must therefore be withheld under section 552.101 of the Government Code in conjunction with TLFRA. As exhibit B is found to be excepted from disclosure in its entirety, we do not address your argument under section 552.117 for the social security number information in this exhibit.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Common law privacy protects information that is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities if (2) there is no legitimate public interest in its disclosure. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). Financial information concerning an individual generally meets both prongs of this test. See Open Records Decision Nos. 545 (1990), 523 (1989). However, as information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest, the doctrine of common law privacy does not generally protect this type of information. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). Note that voluntary deductions, such as those for investment programs or deferred compensation plans offered but not funded by the employer, are not considered financial transactions between the employee and the governmental body. Open Records Decision No. 545 at 3-5 (1990).

The amount deducted for tax purposes is also protected personal financial information. Information in exhibits D and E which reveals such deductions is protected by the common law right of privacy and must be withheld under sections 552.101 and 552.102 of the Government Code.

In conclusion, you must withhold exhibit B in its entirety, as well as the portions of exhibits D and E that reveal the employee's personal financial information. The remaining information must be released.

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,

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 146094

Encl: Submitted documents

cc: Mr. Wm. Brad Woods
214 South 21
Temple, Texas 76504
(w/o enclosures)