



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2004

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-1786

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197377.

The City of McAllen (the "city") received a request for the personnel file of a named individual, including "any advice of changes, references, and any and all other items related to his personnel file." You inform us that the city is releasing redacted copies of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Therefore, we have marked the information that must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be

kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state and provide documentation showing that the named individual is a current employee of the city and that the employee made a timely election under section 552.024 to keep his information confidential. Therefore, the city must withhold the employee's home address and telephone number, social security number, and any information that reveals whether the employee has family members. We have marked the information that must be withheld under section 552.117 of the Government Code.

Section 552.130 of the Government Code is applicable to a portion of the submitted information.¹ Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, you must withhold the information we have marked under section 552.130 of the Government Code.

In summary, you must withhold the information we have marked under sections 552.101, 552.117 and 552.130 of the Government Code. All other 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.

¹The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 197377

Enc. Submitted documents

c: Ms. Karol Montes
Citizens for a Better and Safer McAllen
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(w/o enclosures)