



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2005

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney - Civil Section
Bexar County Criminal District Attorney's Office
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2005-00337

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216778.

The Bexar County Auditor's Office (the "auditor") received a request for a "list of all current CLEAT and Leo Organizations payroll deductions." You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.² We note that information is protected from disclosure by the common-law right of privacy if (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668,

¹ 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.

² Section 552.101 of the Government Code excepts information from disclosure that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

683-85 (Tex. 1976); *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only 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. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is protected from disclosure by the common-law right to privacy. *See* Open Records Decision Nos. 600 (1992) (finding federal tax Form W-4 Employee's Withholding Allowance Certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care related to personal financial decisions), 545 (1990) (deferred compensation plan). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not protected from disclosure by the common-law right to privacy. *See* Open Records Decision No. 600 at 10 (1992).

The requested information relates to voluntary payroll deductions by employees. Therefore, we agree that the requested information is protected from disclosure by the common-law right to privacy. Accordingly, we conclude that the auditor must withhold the requested information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

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

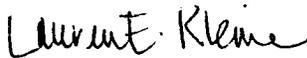
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LE/jev

Ref: ID# 216778

Enc. Submitted documents

c: Mr. Roger Doyalina, President
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(w/o enclosures)