



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2007

Ms. Kelly E. Pagan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-11663

Dear Ms. Pagan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 288349.

The City of Fort Worth (the "city") received a request for the name, full or part-time status, department, title, work and home address and phone number, date of employment, date of birth, salary, benefit information, and e-mail address for all city employees. You state that the city will release all work e-mail addresses to the requestor. You claim that parts of the submitted information are 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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. *Industrial Found.*

v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). You inform this office that a city employee's election to participate in "dental, flex 25, ICMA, Nationwide, AFLAC, CNA, American Heritage, Liberty Mutual, Met Life, pre-paid legal, and long-term disability benefits" is protected by common-law privacy because the city does not contribute financially to these programs. Upon review, we find that the city must withhold these elections, whether "yes" or "no," pursuant to section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone 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 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) protects the same types of information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code.¹ Gov't Code § 552.117(a)(2). The submitted information contains city employees' home addresses and telephone numbers, as well as their elections of whether or not this information may be released. The city must withhold the home address and telephone number of peace officers contained in the submitted information pursuant to section 552.117(a)(2). To the extent that the remaining city employees elected to withhold their home address and/or telephone number and did so prior to the date this request was received, such information must be withheld pursuant to section 552.117(a)(1). The home address and/or telephone number of those remaining employees who did not make such an election, or who did not make a timely election must be released.

In summary, the city must withhold the city employees' elections of dental, flex 25, ICMA, Nationwide, AFLAC, CNA, American Heritage, Liberty Mutual, Met Life, pre-paid legal, and long-term disability benefits, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the home addresses and telephone numbers of peace officers pursuant to section 552.117(a)(2). The city must withhold the home address and/or telephone number of those remaining city employees who

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

timely elected to withhold such information pursuant to section 552.117(a)(1). 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink that reads "Kara A. Batey". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 288349

Enc. Submitted documents

c: Mr. Toby Copeland
6112 McCart Avenue, Suite 205
Fort Worth, Texas 76133
(w/o enclosures)