



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 26, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2008-08672

Dear Mr. Phillips:

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# 313724.

The City of Fort Worth (the "city") received a request for a named city employee's personnel file. You state that the city has redacted a social security number pursuant to section 552.147 of the Government Code.¹ You claim that some of the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Personal financial information that is related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523*

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We have marked documents, as well as information relating to the named employee's net pay and payment of federal withholding tax, that the city must withhold under section 552.101 in conjunction with common-law privacy. We have marked additional payroll information that must also be withheld on this basis, to the extent that the additional information is related to employment benefits or other payroll deductions that are financed solely by the employee and do not involve a financial contribution by the city. To the extent that the additional marked information is related to a employment benefit or other payroll deduction that involves a financial contribution by the city, the information is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses information that other statutes make confidential. Section 6103 of title 26 of the United States Code makes federal tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(2) ("Return information" includes "the nature, source, or amount of income" of a taxpayer). The city must withhold the submitted W-4 form under section 552.101 in conjunction with section 6103.

You also raise section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. A governmental body may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election under section 552.024 to keep the information confidential.

You have marked a home address, home and personal cell telephone numbers, and family member information that the city seeks to withhold under section 552.117. You inform us that the employee concerned requested confidentiality for his address and telephone numbers prior to the city's receipt of the instant request for information. Based on your representation, we conclude that the city must withhold the employee's home address and telephone numbers under section 552.117(a)(1). If the employee also requested confidentiality for his family member information prior to the city's receipt of this request,

then the city must also withhold that information under section 552.117(a)(1), but may not do so if the employee did not timely request that his family member information be withheld.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). You state that the city is withholding Texas driver's license information pursuant to previous determinations issued to the city. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations). We have marked other information that must also be withheld on this basis.

In summary: (1) the city must withhold the documents and the information relating to the named employee's net pay and payment of federal withholding tax that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the additional payroll information that we have marked must also be withheld under section 552.101 and common-law privacy to the extent that the information is related to employment benefits or other payroll deductions that are financed solely by the employee and do not involve a financial contribution by the city; (3) the W-4 form must be withheld under section 552.101 in conjunction with section 6103 of title 26 of the United States Code; (4) the city must withhold the employee's home address, home telephone number, and personal cell telephone number under section 552.117(a)(1) of the Government Code; (5) the city also must withhold the employee's family member information if he timely requested confidentiality for that information under section 552.024 of the Government Code; and (6) the city must withhold the Texas driver's license information that you have marked, as well as the additional information that we have marked, under section 552.130 of the Government Code. The rest of the submitted 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

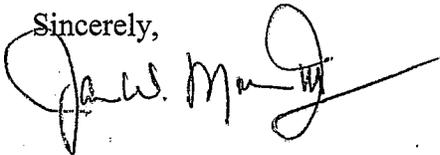
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 challenge 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 313724

Enc: Submitted documents

c: Mr. Terry Davis
3545 Willing Avenue
Fort Worth, Texas 76110
(w/o enclosures)