



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 16, 2009

Mr. Brent A. Money
City Attorney
Scott, Money & Ray PLLC
P.O. Box 1353
Greenville, Texas 75403-1353

OR2009-00675

Dear Mr. Money:

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# 332678.

The City of Greenville (the "city"), which you represent, received a request for information related to the city's expenditures on behalf of all current city employees in the Texas Municipal Retirement System (the "TMRS"), including employee names, job titles, department assignments, ages or years of birth, current base salaries, and the total number of months of all service credit paid for the employee by the city to the TMRS. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release

of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Prior decisions of this office have found that personal 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 excepted from disclosure under the common-law right of privacy. *See* ORD 545 (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). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* ORD 600 at 10.

You argue the submitted information is confidential under section 552.101 in conjunction with common-law privacy because it "would provide information regarding an employee's [sic] to participate in the program, which is a personal financial decision, not an official act or decision." However, the requestor asserts "[e]mployees have no decision or option whether or not they participate in TMRS while employed by the local governmental entity." The requestor also asserts "[a]ll employees are involuntarily compelled to participate and have no decision on the amount they contribute or the investment decisions of TMRS." Section 852.001(a) of the Government Code addresses participation in the TMRS and states election to participate in the TMRS is made by "vote of [a municipality's] governing body in the manner required for other official actions[.]" Gov't Code § 852.001(a). Further, section 852.101(a)(1) states an employee of a municipality becomes a member of the TMRS automatically if he or she is an employee on the date the municipality's participation in the TMRS becomes effective. *Id.* § 852.101(a)(1). Section 855.401 addresses member contributions and provides the rate of member contributions to the TMRS is determined by the municipality, and not the members. *Id.* § 855.401. The TMRS website shows the city is a participating municipality. The request is for information pertaining to current city employees. Therefore, we find the submitted information does not reveal personal financial decisions of the city employees because membership and the amount of contribution are not voluntary decisions made at the discretion of the employees. Although you seek to withhold all of the submitted information under common-law privacy, you have not provided any other arguments explaining how this information is highly intimate or embarrassing and not of legitimate public concern. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Therefore, because the city has failed to demonstrate that the submitted information is protected by privacy and raises no other arguments against disclosure, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 332678

Enc. Submitted documents

c: Requestor
(w/o enclosures)