



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2009

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-01170

Dear Ms. Middlebrooks:

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# 333842 (DPD Open Records Request No. 08-8247).

The City of Dallas (the "city") received a request for several categories of information pertaining to the city's relationship with a named utility company, city procedures for reporting light outages, and reports received over a specified period of time involving light outages in a specified area, as well as information pertaining to a named city police officer and a specified internal investigation involving that officer. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note you have redacted social security numbers from the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²We 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.

Initially, we note that it appears you have only submitted information responsive to the part of the request for information seeking the personnel file of the named officer. Therefore, we assume that the city has released the remaining requested information to the extent it existed at the time of the request. If not, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

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 information made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Thus, the submitted W-4 form constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989). Further, this office has concluded 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) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Generally, however, the public has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6

(1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow).

Upon review, we agree that some of the remaining information, pertaining to tax exemption elections, is confidential under common-law privacy. Therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we find that the remaining financial information you have marked relates to compensation paid to a city employee. Thus, there is a legitimate public interest in the information. Further, the individual to whom the marked criminal history information relates is not identified. Thus, we find that this information is either not intimate or embarrassing or is a matter of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code. Accordingly, the city must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code.³

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We agree the city must withhold the Texas driver's license information you have marked under section 552.130.

You assert that the employee identification numbers you have marked in the remaining information are confidential under section 552.136(b) of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. You inform us that an employee's identification number is also used as an employee's credit union bank account number. Thus, we agree that this information is subject to section 552.136. However, the remaining information you have marked is not a credit card, debit card, charge card, or access device number, and thus may not be withheld pursuant to this exception. Therefore, the city must withhold the information that you have marked, except for the information we have marked for release, under section 552.136 of the Government Code.

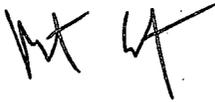
³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the city must withhold (1) the W-4 form we have marked under section 552.101 of the Government Code in conjunction with federal law, (2) the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code, (3) the Texas driver's license information you have marked under section 552.130 of the Government Code, (4) the information that you have marked, except for the information we have marked for release, under section 552.136 of the Government Code, and (5) the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released to the requestor.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 333842

Enc. Submitted documents

cc: Requestor
(w/o enclosures)