



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2009

Mr. Joe Torres, III  
Attorney at Law  
216 N. Texas Boulevard, Suite 2  
Alice, Texas 78332

OR2009-07688

Dear Mr. Torres:

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# 344975.

The City of Alice (the "city"), which you represent, received a request for paycheck stubs, time sheets, two week summaries, and 28-day payroll records from January 1, 2008, to December 31, 2008, related to eight named individuals. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 6103(a) of title 26 of the United States Code makes "return information" confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) provides, in relevant part, that "return information" means information "received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" 26 U.S.C. § 6103(b)(2). Upon review, we find that you have failed to demonstrate that the submitted information falls within the definition of "return information"

under section 6103(b)(2). Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102. In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we will address your privacy claims under sections 552.101 and 552.102(a) together.

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 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. See 540 S.W.2d at 685. This office has found personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing. See Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy). Upon review of the submitted information, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, we have marked a representative sample of the information that must be withheld under sections 552.101 in conjunction with common-law privacy and section 552.102(a). However, we find that no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the remaining information may be withheld as private under sections 552.101 or 552.102.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." Gov't Code § 552.102(b). We note, however, the submitted information does not contain a transcript from an institution of higher education that is maintained in the personnel file of a professional public school employee. Accordingly, no portion of the submitted information may be withheld under section 552.102(b).

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member

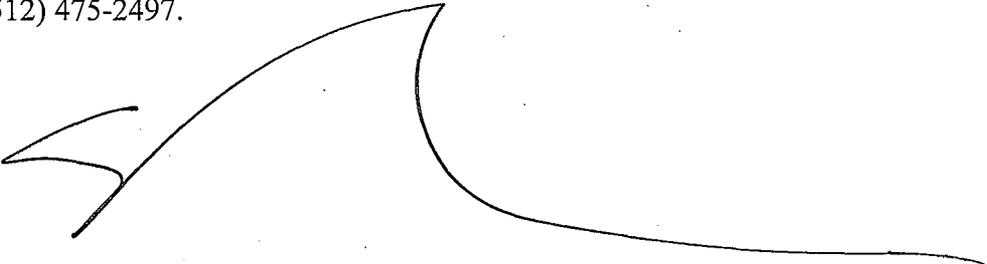
information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. The remaining information does not contain current or former home addresses, telephone numbers, social security numbers, or family member information of a current or former official or employee of the city and is therefore not excepted from disclosure under section 552.117.

In summary, the city must withhold the types of information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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](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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 344975

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)