



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2009-15810

Dear Ms. Byles:

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# 360565 (Fort Worth PIR No. 5253-09).

The City of Fort Worth (the "city") received a request for information regarding training, professional meetings, professional organization dues, and membership fees for all employees of the city's Internal Audit Department for the last two years. You state the city is releasing some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that you have redacted the home telephone number of a city employee who elected to keep her information private pursuant to section 552.024 of the Government Code. Section 552.024(c) generally authorizes a governmental body to withhold information subject to section 552.117 of the Government Code without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. Gov't Code § 552.024(c). We now address your claimed exceptions for the remaining submitted information.

Next, you contend that the signatures you have marked are confidential under the doctrines of constitutional and common-law privacy. 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 constitutional and common-law privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Personal financial information that relates 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. 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 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).

Upon review, we conclude that none of the signatures you have marked come within one of the constitutional zones of privacy or involve the most intimate aspects of human affairs. Therefore, the signatures you have marked may not be withheld under section 552.101 on the basis of constitutional privacy. Additionally, we find that the marked signatures, which relate to the city's reimbursement of Internal Audit Department employees for certain expenditures, are a matter of legitimate public interest. Thus, the marked signatures are not confidential under common-law privacy, and the city may not withhold them under section 552.101 of the Government Code on that ground.

Next, you claim some of the information you have marked is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 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. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument. *Id.* Upon review, we agree the city must withhold the credit card numbers and bank account numbers we have marked under section 552.136. Although you assert the federal tax identification number and the remaining portions of information you have marked are access device numbers, we find that you have failed to demonstrate how the information at issue constitutes access device numbers used to obtain money, goods, services, or another thing of value, or initiate a transfer of funds other than a transfer originated solely by paper instrument. We therefore conclude the city may not withhold any of the remaining information under section 552.136 of the Government Code.

Finally, you assert the remaining information contains personal e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). Therefore, unless the owners of the e-mail addresses at issue consent to their release, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the city must withhold the information we have marked pursuant to section 552.136 of the Government Code. Unless the owners of the e-mail addresses at issue consent to their release, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.¹

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,

¹Although the requestor has asked for the information in a particular format, we note that the Act does not generally require a governmental body to produce information in the particular format requested. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975).

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Shipp".

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/eb

Ref: ID# 360565

Enc. Submitted documents

cc: Requestor
(w/o enclosures)