



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2009

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2009-18064

Dear Ms. Sims:

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# 366077.

The City of Lubbock (the "city") received a request for the "latest pay stub" of a named city employee. You claim that portions of the submitted information are excepted from disclosure under sections 552.102 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code. For information to be protected from public disclosure by the

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<sup>1</sup>Although you raise section 552.101 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this section. See Gov't Code §§ 552.301, .302.

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. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82.

This office has found that personal financial information not relating to a 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, that generally 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 find that some of the submitted information constitutes personal financial information. We also find that this information is not of legitimate public concern. Thus, the city must withhold the information we have marked under section 552.102 of the Government Code. The remaining information, however, either is not intimate or embarrassing or it is of legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.102 of the Government Code.

You raise section 552.117 of the Government Code for some of the remaining information. Section 552.117(a)(1) excepts from public disclosure the home address, home telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined 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 official or 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024

that the information be kept confidential. You state, and provide documentation showing, that the employee whose information is at issue timely elected to keep his information confidential pursuant to section 552.024. Accordingly, we find the city must withhold the information we have marked under section 552.117(a)(1).

In summary, the city must withhold the information we have marked under section 552.102 of the Government Code. The city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID#366077

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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