



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2010

Ms. Leticia Garza
City of Baytown
P.O. Box 424
Baytown Texas 77522-0424

OR2010-05436

Dear Ms. Garza:

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#377986.

The City of Baytown (the "city") received a request for copies of the severance agreements and final paychecks of two former city employees. You state you have previously released the severance agreements to the requestor in response to a prior request for information. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant requests for information). You claim that a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

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. This section encompasses information protected by 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." *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the test to be applied to information protected under section 552.102 is the same 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 consider your privacy claims under both sections 552.101 and 552.102.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a

person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for 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). You state that the information you have marked relates to voluntary participation in an alternate retirement plan, a city management association, and an optional flexible spending account. Upon review, we agree that this information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked additional information that must be withheld. However, we find you have failed to demonstrate that any portion of the remaining information is highly intimate or embarrassing information of no legitimate public concern. Accordingly, no portion of the remaining information may be withheld under either under section 552.101 or 552.102 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024.¹ See *id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You do not explain whether the former employees whose information is at issue have timely elected to keep their personal information confidential. Therefore, to the extent the employees timely elected to keep their personal information confidential, the city must withhold the personal information we have marked under section 552.117(a)(1). Conversely, to the extent the employees did not make timely elections under section 552.024, the city may not withhold any portion of the marked information under section 552.117(a)(1).

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(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be 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.” *Id.* § 552.136(a). Upon review, we find the bank account numbers and routing numbers, which we have marked, must be withheld under section 552.136 of the Government Code.²

In summary: 1) the city must withhold the personal financial information you have marked, in addition to the information we have marked, pursuant to section 552.101 in conjunction with common-law privacy; 2) to the extent the employees timely elected to keep their personal information confidential, the city must withhold the information we have marked pursuant to section 552.117 of the Government Code; 3) the city must withhold the bank account and routing numbers we have marked pursuant to section 552.136 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID#377986

Enc. Submitted documents

c: Requestor
(w/o enclosures)