



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 26, 2010

Mr. John Knight  
Assistant City Attorney  
City of Denton  
215 East McKinney  
Denton, Texas 76201

OR2010-05858

Dear Mr. Knight:

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# 381833.

The City of Denton (the "city") received a request for information pertaining to a specified city employee, a specified phone call, and specified video footage. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public 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 protected by 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." 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 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 Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the

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<sup>1</sup>We 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.

doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the city's section 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) it 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. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; 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). However, this office has found there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision No. 373 (1983). Upon review of the submitted information, we find some is highly intimate or embarrassing and not of legitimate public interest. Accordingly, we have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy and section 552.102(a).<sup>2</sup> However, we find the remaining information is not highly intimate or embarrassing or it is of legitimate concern to the public. Accordingly, no portion of the remaining information may be withheld under section 552.101 or section 552.102(a) on this basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. You state, and provide an election form showing, that the individual at issue timely elected to keep his home address and telephone number confidential. However, the submitted election form only permitted the employee at issue to request confidentiality for his home address and telephone number. Thus, the employee at issue did not request confidentiality for his family member

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<sup>2</sup>As our ruling is dispositive, we need not address your other arguments against disclosure of this information.

information. Therefore, the city must withhold only the home address and telephone number you have marked under section 552.117(a)(1) of the Government Code.

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(a)(1), (2). Accordingly, the city must withhold the Texas driver's license you have marked, in addition to the information we have marked, in the remaining information pursuant to section 552.130 of the Government Code.<sup>3</sup>

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102(a) of the Government Code. The city must withhold only the home address and telephone number you have marked under section 552.117(a)(1) of the Government Code. The city must withhold the Texas driver's license information marked pursuant to section 552.130 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>We 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 Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 381833

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)