



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2011

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-00619

Dear Mr. Casas:

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# 405784 (COSA File No. ORR 10-1746).

The City of San Antonio (the "city") received a request for the petition signatures taken in the 2010 elections for the Equal Employment Opportunity slots for the Employment Management Committee. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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. You raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.*

You argue the submitted petitions are excepted from disclosure under common-law privacy, and in support of your argument, you reference a decision, *Pacific Molasses Co. v. Nat'l Labor Relations Bd. Reg'l Office No. 15*, 577 F.2d 1172 (5th Cir. 1978), that decided privacy under section 552(b)(6) of the federal Freedom of Information Act ("FOIA"). However, we note that common-law privacy under the Act differs from the privacy right protected under the exemptions of FOIA. To determine whether the FOIA exceptions prohibit disclosure, federal courts must first determine if an individual has a privacy interest and then balance that interest against the public's interest in disclosure. See 5 U.S.C. §§ 552(b)(6). In applying common-law privacy under Texas law, however, the courts have rejected the balancing of interests test. See *Indus. Found.*, 540 S.W.2d at 681-682 (under policy determination that Texas legislature made in enacting predecessor to section 552.101, court is not free to balance public's interest in disclosure against harm to person's privacy). This office will apply common-law privacy as set forth in *Industrial Foundation* rather than under FOIA. See Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976); see also Open Records Decision No. 561 at 7 n 3 (1990) (noting that federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law).

We understand you to assert the submitted information may constitute personal financial information that is protected from disclosure under common-law privacy. We note common-law privacy encompasses certain types of personal financial information. This office has determined that 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. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 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). However, we note this office has stated that an expectation of privacy on the part of an individual who provides information to a governmental body does not permit the information to be withheld under section 552.101. See Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted).

Pursuant to section 552.303 of the Government Code, we asked you whether the city employees who signed the petitions at issue pay union dues through payroll deductions or

through any other method.¹ In response, you informed our office that the individuals who signed the petitions include both employees who pay union dues and those who do not. Accordingly, upon review, we conclude the petitions at issue do not reflect any particular employee's decision to pay union dues, and therefore, do not reveal any personal financial decisions. Furthermore, upon review, we find that none of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the submitted information must be released to the requestor.

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,



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

ALS/tf

Ref: ID# 405784

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).