



February 4, 2015

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-02210

Dear Mr. Trevino:

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# 552793 (PIR No. W038477).

The City of Fort Worth (the "city") received a request for the personnel records of a named employee. You state the city has released the majority of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note you have marked portions of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestor.

¹We understand you to raise section 552.117 of the Government Code based upon your markings.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *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 satisfied. *Id.* at 681-82.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found 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 (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). Thus, a public employee’s allocation of part of the employee’s salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. We note payroll deductions for federal withholding tax are protected by common-law privacy and must be withheld under section 552.101. However, the payroll deductions for social security, mandatory retirement, and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (participation in TexFlex), 545 at 3-5 (1990) (deferred compensation plan); *see also* Attorney General Opinion GA-0572 at 4 (2007) (public employee’s net salary protected by common-law privacy, but gross salary is not). Finally, we note the public interest in a public employee’s prior salary justifies disclosure, as such information bears on the employee’s past employment record and suitability for the employment position in question. *See* Open Records Decision No. 455 at 9 (1987).

You do not explain whether the listed payroll deductions and benefits reflect mandatory participation by the employee or are the employee’s voluntary financial decisions. Thus, to the extent this information reflects the employee’s voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the city, or deductions for federal withholding tax, the city must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employee’s mandatory participation in the city’s retirement program, benefits paid by the city, or social security or medicare deductions, the deduction amounts are not confidential and may not be withheld under section 552.101 on this basis.

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(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the city must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

We understand the city marked certain information for redaction under section 552.117(a)(1) of the Government Code as permitted by section 552.024 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have provided documentation of the employee’s timely election under section 552.024. Accordingly, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code.

In summary, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy, to the extent the marked payroll information reflects the employee’s voluntary allocation of salary to optional investment, retirement, and other financial programs offered by the city, or deductions for federal withholding tax. The city must withhold the marked employee date of birth under section 552.102(a) of the Government Code. The city must withhold the information it has marked, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code. The city must release the remaining responsive information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cindy Nettles', written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 552793

Enc. Submitted documents

c: Requestor
(w/o enclosures)