



February 13, 2015

Ms. Nneka Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2015-02981

Dear Ms. Kanu:

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# 554225 (GC No. 21925).

The City of Houston (the "city") received a request for information pertaining to construction and infrastructure improvement projects funded by the city for a specified time period. You state you will release some information to the requestor. You state the city will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</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."

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This section 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. 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; 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). However, whether financial information is subject to a legitimate public interest and, therefore, is not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

The submitted certified payroll records pertain solely to transactions between the projects' contractors, subcontractors, and their employees. The city informs this office federal law provides, as a requisite to the receipt of federal funding for certain construction projects, the city must include certain provisions in their contracts with contractors. In this instance, you represent one such provision requires the city to receive and retain payroll records from its contractors and subcontractors so federal agencies can audit those records to ensure the contractors' and subcontractors' compliance with applicable federal wage regulations. *See* 23 C.F.R. § 635.118. You further inform this office the city has not itself used the payroll records for any public purpose, other than receiving and retaining them for review by a federal agency.

Upon review, we find the identities of the employees in the payroll records at issue meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, after careful consideration, we find there is a legitimate public interest in knowing whether a private entity engaged in the construction of federally funded projects is in compliance with applicable federal wage regulations. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions against disclosure have been raised, the city must release the remaining 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](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 "Paige Thompson". The signature is fluid and cursive, with the first name "Paige" being more prominent and the last name "Thompson" following in a similar style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/akg

Ref: ID# 554225

Enc. Submitted documents

c: Requestor  
(w/o enclosures)