



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2015

Ms. Diane L. Lincoln
Mayor
Town of Woodloch
P.O. Box 1379
Conroe, Texas 77305

OR2015-24790

Dear Ms. Lincoln:

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# 588376.

The Town of Woodloch (the "town") received a request for specified financial documents for specified time periods. You claim some of the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.116, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We

¹Although you also raise section 552.022 of the Government Code, we note section 552.022 is not an exception to disclosure. Rather, this provision enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under the Act or other law. *See* Gov't Code § 552.022. Furthermore, although you raise section 552.023 of the Government Code, we note section 552.023 is not an exception to public disclosure under the Act. *See id.* § 552.023 ("person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Further, although you raise section 552.024 of the Government Code as an exception to disclosure, we note section 552.024 is also not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. *See id.* § 552.024. Finally, you also argue section 552.305 of the Government Code applies to the submitted information. We note section 552.305 is not an exception to disclosure under the Act. *See id.* § 552.305.

have also received and considered comments from a requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You contend some of the submitted information is not subject to the Act. The Act is applicable only to "public information." *See id.* §§ 552.002, .021. Section 552.002(a) defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body:

(2) for a governmental body and the governmental body:

(A) owns the information:

(B) has a right of access to the information: or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You assert the submitted payroll detail transaction reports relate to purely private and personal matters unrelated to official town business and thus are not public information as defined by section 552.002. However, upon review, we find the payroll reports consist of information that is written, produced, collected, assembled, or maintained in connection with the transaction of official business by the town. Thus, we conclude the payroll detail transaction reports constitute "public information" as defined by section 552.002(a).

Next, we address your assertion that the instant request for information is redundant of a previous request made to the town. Section 552.232 of the Government Code outlines the procedures a governmental body must follow in responding to a repetitious or redundant request. Gov't Code § 552.232. You inform us the requestor is party to a lawsuit wherein

other parties previously requested the submitted information, which the town released. You assert the present request is for the same information. However, the requestor in this instance is not the requestor who made the previous requests. Therefore, you have failed to demonstrate the instant request for information is a repetitious or redundant request for purposes of the Act. Thus, we will consider your arguments against disclosure of the requested information. Furthermore, we must address the applicability of section 552.007 of the Government Code to the submitted information.

Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See id.* § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in “informal” discovery is not “voluntary” release of information for purposes of statutory predecessor to Gov’t Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov’t Code § 552.108). Accordingly, pursuant to section 552.007, the town may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you raise sections 552.103 and 552.116 for the submitted information, these sections are discretionary exceptions and do not make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). Thus, the town may not now withhold the previously released information under sections 552.103 and 552.116. However, you also raise sections 552.101, 552.102, and 552.117 of the Government Code, which make information confidential under the Act. Therefore, we will address the applicability of these sections to 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. Section 552.101 also 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; *see* Open Records Decision No. 523 (1989) (common-law privacy protects credit

reports, financial statements, and other personal financial information). You seek to withhold the payroll detail transaction reports and employee earnings summary reports under section 552.101 in conjunction with common-law privacy. Upon review, we find the town has failed to demonstrate any of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the town may not withhold the information at issue under section 552.101 of the Government Code in conjunction with 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[.]” Gov’t Code § 552.102(a). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts*, 354 S.W.3d 336. The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. However, we find no portion of the information you seek to withhold under this exception is subject to section 552.102(a) of the Government Code, and the town may not withhold any of the information on that basis.

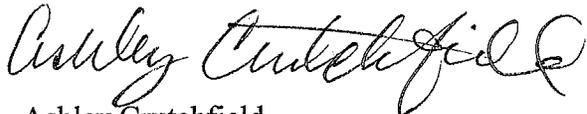
Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov’t Code § 552.117(a)(1)*. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. In this instance, the information at issue does not include the home address and telephone number, emergency contact information, social security number, or family member information of a current or former employee or official of the town. Thus, section 552.117 is not applicable to the information at issue. Therefore, the town may not withhold any of the information at issue on this basis.

In summary, the town must release the submitted 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 cursive script that reads "Ashley Crutchfield". The signature is written in black ink and is positioned above the typed name.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 588376

Enc. Submitted documents

c: Requestor
(w/o enclosures)