



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2015

Ms. Lori Fixley Winland
Counsel for the City of Galveston Employees' Retirement Plan for Police
Locke Lord, L.L.P.
600 Congress, Suite 2200
Austin, Texas 78701

OR2015-19257

Dear Ms. Winland:

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# 579622.

The City of Galveston Employees' Retirement Plan for Police (the "plan"), which you represent, received a request for a copy of the current police pension plan; the police pension plan in effect as of January 1, 2007; the most recent actuary study performed; charts, formulas, or any other method used to calculate police pension funding needs; a list of members receiving pension benefits and the amount of their monthly benefits; a list of police pension investments along with current valuations; reports or summaries related to the past, present, and future gains and losses of police pension investments since January 1, 2007; a list of the current police pension plan board of directors; the name, address, and telephone number of the entity or individual responsible for managing the police pension plan investments; and any request, recommendation and/or proposal regarding changes to the current police pension plan or disbursement to members who are currently receiving benefits. You state you have released some information to the requestor. 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.¹

Initially, you inform this office some of the submitted information is not responsive to the instant request because it is outside of the scope of the requested information. This ruling does not address the public availability of any information that is not responsive to the request and the plan is not required to release such information in response to this request.

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 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy). This office has also determined that a public employee’s net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating that net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to the public). However, 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 Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find the plan has failed to demonstrate the responsive information is highly intimate or embarrassing and of no legitimate public interest because membership in the pension plan is mandatory rather than a voluntary decision. Thus, the plan may not withhold the responsive information under

¹We 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.

section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the plan must release the 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 579622

Enc. Submitted documents

c: Requestor
(w/o enclosures)