



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2017

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2017-13218

Dear Ms. Silver:

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# 661974 (Reference# C001401-022317).

The City of Dallas (the "city") received a request for invoices pertaining to sixteen categories of expenses. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative samples of information.²

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

¹We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume the "representative samples" of records submitted to this office are 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.

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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs. 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 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Furthermore, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, it is not clear whether the listed payroll deductions and benefits reflect mandatory participation by the employees or are the employees' voluntary financial decisions. Thus, to the extent this information reflects the employees' voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the city, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employees' mandatory participation in the city's retirement program or benefits paid by the city, the deduction amounts are not confidential and may not be withheld on that basis. In either instance, the city must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, "[n]ot with standing any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We understand the employee

identification numbers you have marked are used in conjunction with one additional digit to access city credit union bank accounts. We therefore conclude the city must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. Additionally, the city must withhold the account number you have marked under section 552.136 of the Government Code.

In summary, to the extent the information we have marked reflects the employees' voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the city, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold information you have marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 661974

Enc. Submitted documents

c: Requestor
(w/o enclosures)