



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 26, 2017

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

OR2017-22038

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# 677193.

The Town of Woodloch (the "town") received a request for specified financial documents for specified time periods. You state you have previously released some of the requested information to the requestor in response to a prior request for information. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant requests for information). You claim some of the submitted information is not subject to the Act. Alternatively, you claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.<sup>1</sup> Additionally, you state you notified individuals of their rights to submit comments to this office why some of

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<sup>1</sup>Although 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"). 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.

the submitted information should not be released.<sup>2</sup> *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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 general ledger reports and 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 general ledger reports and 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 general ledger reports and payroll detail transaction reports constitute “public information” as defined by section 552.002(a).

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<sup>2</sup>As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

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 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 a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. Open Records Decision No. 545 (1990). We note 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; *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).

You seek to withhold portions of the submitted information 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) of the Government Code 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. As no further exceptions to disclosure have been raised, 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](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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MC/sb

Ref: ID# 677193

Enc. Submitted documents

c: Requestor  
(w/o enclosures)