



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2019

Mr. Reggie Hollins
Legal Technology Specialist
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2019-27422

Dear Mr. Hollins:

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# 788245 (Reference No. FIN-R001028)

The City of Plano (the "city") received a request for certain payroll information.¹ We understand you will redact information under section 552.136(b) of the Government Code.² 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.³

¹ We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). Additionally, we note, and you provide documentation showing, you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615.

² Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

³ 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

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 information made confidential by statutes, such as section 402.083 of the Labor Code. Section 402.083 provides, in part, “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation for the Texas Department of Insurance (the “division”)] except as provided by this subtitle or other law.” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Additionally, this office has interpreted section 402.083 to generally protect only that “information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers’ compensation claims.” *See* Open Records Decision No. 619 at 10 (1993). However, we also have stated, “[w]hether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis.” *Id.* Based on this analysis, we find information in the possession of the city that was not obtained from the division may not be withheld on the basis of section 402.083 of the Labor Code. Although the city asserts some of the submitted information is confidential pursuant to section 402.083, the city provides no representation, and the documents do not reflect, the city received these records from the division. Therefore, the city has failed to demonstrate the applicability of section 402.083 to any of the information at issue. Thus, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code.

Section 552.101 of the Government Code 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. This office has found personal financial information not relating to a 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) (designation of beneficiary of employee’s retirement benefits, 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

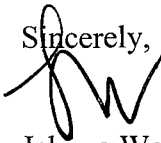
letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

coverage, mortgage payments, assets, bills, and credit history). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, 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 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/mo

Ref: ID# 788245

Enc. Submitted documents

c: Requestor
(w/o enclosures)