



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Ms. Britney Long  
Counsel for the Town of San Felipe  
Bojorquez Law Firm, PC  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2019-32629

Dear Ms. Long:

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# 797590.

The Town of San Felipe (the "town"), which you represent, received a request for the following: specified check registers; specified bank statements; Detailed Profit and Loss statement for a specified time period; and annual budgets for a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Next, we note you have redacted portions of the submitted information. We understand the town has redacted account numbers and bank routing numbers under section 552.136(c) of the Government Code.<sup>3</sup> However, you do not assert, nor does our review of our records

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<sup>1</sup> Regardless of whether the town complied with section 552.301, as 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* Gov't Code §§ 552.007, .302, .352.

<sup>2</sup> 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 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.

<sup>3</sup> 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

indicate, the town has been authorized to withhold the remaining redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

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 is subject to the two-part test discussed above. *See Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *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). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 600 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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 coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 455 at 9 (employment applicant's salary information not private). 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 employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 423 at 2 (1984) (scope of public employee privacy is narrow). 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). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public

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§ 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).

concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Further, an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986).

Upon review, we conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must generally withhold this information, a representative sample of which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, it is not clear whether the payroll deductions and benefits at issue reflect mandatory participation by the employees at issue or are the employees' voluntary financial decisions. Thus, to the extent this information, a representative sample of which we marked, reflects an employee's voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the town, the town must withhold the types of 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 an employee's mandatory participation in the town's retirement program or benefits paid by the town, the information at issue may not be withheld on that basis. The town has failed to demonstrate, however, the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code applies to records held by a governmental body in an employment capacity and 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.<sup>4</sup> *See* Gov't Code § 552.117(a); Open Records Decision No. 622 (1994). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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. We marked the personal information of a town employee. If the employee whose personal information is at issue timely elected to keep his information confidential pursuant to section 552.024, the town must withhold the information we marked under section 552.117(a)(1). The town may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to keep his information confidential pursuant to section 552.024.

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<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

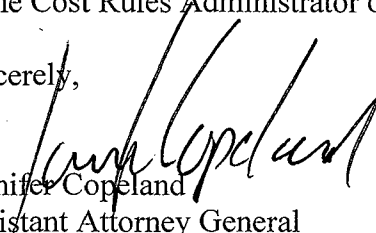
Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136; *see also id.* § 552.136(a) (defining “access device”). Accordingly, we find the town must withhold the account numbers and bank routing numbers you marked under section 552.136 of the Government Code.

In summary, to the extent the representative sample of information we marked reflects an employee’s voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the town, the town must withhold the types of information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the employee whose personal information is at issue timely elected to keep his information confidential pursuant to section 552.024, the town must withhold the information we marked under section 552.117(a)(1) of the Government Code. The town must withhold the account numbers and bank routing numbers you marked under section 552.136 of the Government Code. The town 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 797590.

Enc. Submitted documents

c: Requestor  
(w/o enclosures)