



June 22, 2000

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2000-2396

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136408.

The City Attorney's Office for the City of Grand Prairie (the "city") received a request for "all open records requests filed with the city attorney's office between February 15, 2000 and April 11, 2000." You have provided for our review a representative sample of information that is responsive to the request. You assert no exception for withholding the responsive information, but you inquire whether the information meets the definition of "public information" found at section 552.002 of the Government Code.

Section 552.002 states in pertinent part that the term public information "means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by a governmental body. Gov't Code § 552.002.¹ We have no doubt that the information at issue meets this definition.

By its express terms, the Act requires that a request for information be in writing. Gov't Code § 552.301; Open Records Decision No. 304 at 2 (1982). Therefore, governmental bodies must collect and maintain the information at issue "under a law," specifically the Act. You state that "the governing body does not 'use' the request for any purpose, *other than that the staff must respond and provide the citizen with the requested information.*" (emphasis added). It is certainly within the scope of a governmental body's "official business" to respond to public information requests. Your own statement therefore acknowledges that the city collects the written requests "in connection with the transaction of official business." Moreover, as you

¹Your comments rely upon the categories of public information described at section 552.022 of the Government Code to define the scope of information that meets the definition found at section 552.002. We believe this reliance is misplaced. Before describing the various categories of information that constitute public information, section 552.022(a) specifically states that the section does not limit "the amount or kind of information that is public information" under the Act. See Gov't Code § 552.022(a).

also acknowledge, a governmental body that seeks to withhold information that is responsive to a request must seek a decision from this office. Gov't Code § 552.301. In so doing, the governmental body is *required* to submit to this office a copy of the written request for information. Gov't Code § 552.301(e)(1)(B). Thus, the information at issue is not only collected, but is also maintained by governmental bodies both "under a law" and "in connection with the transaction of official business."² Hence, the information at issue constitutes "public information" for purposes of the Act.

You pose the following question: "does a document received from outside the City, *unsolicited*, become public information, and itself subject to disclosure as a public document?" (emphasis added). This question, and other comments you have submitted, indicate concern on your part of whether there exists an expectation of confidentiality for information submitted to governmental bodies. This office has long held that a governmental body's promise to keep confidential information that is subject to the Act is not a basis for withholding the information from the public, unless the governmental body has specific statutory authority to keep the information confidential. Open Records Decision Nos. 514 (1988), 479 (1987), 444 (1986). Thus, information subject to the Act is not confidential simply because the party submitting it anticipates or requests that it be kept confidential. The above question also appears to assume that if information meets the definition of public information at section 552.002, the information automatically becomes a "public document." We disagree. The term "public information" for purposes of the Act merely defines the scope of information that is governed by the Act. Information that meets the definition of "public information" may nevertheless be excepted from required public disclosure under one or more of the Act's numerous exceptions. See Gov't Code §§ 552.101 through 552.132. A governmental body that seeks to withhold public information and that has a good faith believe that the information is excepted from required disclosure must follow the procedures outlined in the Act, including requesting a decision of this office. See Open Records Decision No. 665 (2000); see also Gov't Code § 552.301.

Although you assert no exceptions under the Act for withholding any of the information at issue, your comments make reference to the privacy interests of those individuals who have submitted written requests for information to the city that are responsive to the present request.³ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information subject to the common law or constitutional right to privacy. Thus, we next

²As to the city's "maintenance" of the requests, we note that many of your comments pertain to whether and in what manner the city must retain correspondence received by it. These concerns relate to records retention requirements, which this decision does not address. For assistance pertaining to records management, you should contact the Texas State Library and Archives Commission at (512) 452-9242.

³We caution that we 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 any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

consider whether any of the submitted information implicates common law or constitutional privacy rights.

The common law right to privacy protects information from required disclosure if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie*, 765 F.2d at 492).

We have carefully reviewed the submitted information with reference to the above-stated privacy tests, and we conclude that none of the submitted information must be withheld as implicating the common law or constitutional privacy interests of an individual. As you have asserted no exceptions for withholding any of the responsive information, we additionally conclude that you must release to the requestor, in its entirety, the information that is responsive to the request.

You state that the city maintains “no central depository” for the information at issue, and your comments indicate resistance to locating the responsive information. We note that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 at 8 (1990). The city may not deny the request simply because it is a burden to retrieve the requested information. However, the city may be permitted to charge for the costs involved with complying with the request. Such charges must be assessed as provided by section 552.262 of the Government Code and rules promulgated by the General Services Commission.⁴

⁴For answers to questions pertaining to costs, you may contact the General Services Commission at (512) 475-2497.

This letter ruling is limited to the particular records 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 records or any other circumstances.

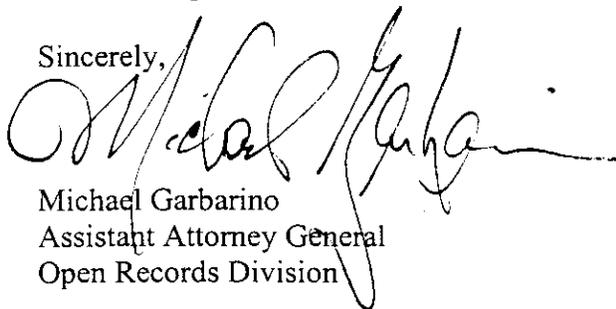
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 136408

Encl. Submitted documents

cc: Ms. Tawnell Hobbs
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(w/o enclosures)