



September 19, 2000

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2000-3599

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139272.

The City of Corpus Christi (the "city") received a request for various information in the personnel files of three named individuals. You state that a portion of the requested information has been provided to the requestor. You claim, however, that the information you have submitted for our review, marked as exhibits B-D, is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We initially note that you have failed to timely submit a request for a decision as required by Government Code section 552.301. Subsections 552.301(a) and (b) provide as follows:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In this case, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). In this instance there is a compelling reason to overcome the presumption of openness because the release of information would affect the interests of third parties. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The submitted information contains personal financial information. You have marked this information as exhibit B. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Common law privacy excepts from disclosure private facts about an individual. *Id.* Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In Open Records Decision No. 373 (1983), this office concluded the following:

[A]ll financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The public has no legitimate interest in personal financial information not involving a financial transaction between an individual and a governmental body. See Open Records Decision No. 545 (1990). We conclude that exhibit B, in its entirety, must be withheld under section 552.101.

Exhibit C contains copies of driver's licenses. Section 552.130(a)(1) of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, you must withhold the copies of the driver's licenses under section 552.130.

You argue that exhibit D includes information excepted from disclosure under Government Code section 552.117. Government Code section 552.117(1) excepts from disclosure the home addresses, telephone numbers, social security numbers, and family information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the individual requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the individual made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We have marked the information in exhibit D which may require redaction prior to the release of the exhibit.

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

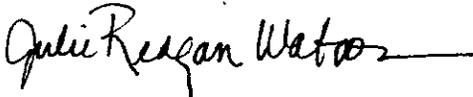
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 139272

Encl. Marked documents

cc: Mr. Michael P. O'Brien
P. O. Box 6791
Corpus Christi, Texas 78468-6791
(w/o enclosures)