



September 6, 2001

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla
Dallas, Texas 75201

OR2001-3965

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151615.

The City of Dallas (the "city") received a request for the "first 3 complaints filed with the [city's] ethics committee." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is deemed to be confidential under other law. You claim that the requested information is confidential under section 552.101 in conjunction with the city's Code of Ethics, section 12A-26(b), which provides:

Confidentiality. No city official shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties. *Ex parte* communications by or to members of the ethics advisory commission are prohibited by Section 12A-27 of this chapter. All papers and communications relating to a complaint must be treated as confidential to the extent allowed by law.

In Open Records Decision No. 594 (1991), this office considered a claim that information relating to drug testing of employees of the City of Odessa was confidential under section 552.101 in conjunction with a city ordinance. In concluding that it was not, we explained:

The Open Records Act provides that all information maintained by governmental bodies is public except as provided in that act. Thus, the provisions in the city's Ordinance No. 89-49 cannot operate on their own to make city drug testing information confidential.

ORD 594 at 3 (applying statutory predecessor to Gov't Code § 552.101). We likewise conclude, in this instance, that the city's Code of Ethics, section 12A-26(b), does not make the requested information confidential by law under section 552.101. *See City of Brookside v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982) (stating that ordinance that conflicts or is inconsistent with state legislation is impermissible).

You also contend that the requested information is confidential under section 552.102 of the Government Code. Section 552.102 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). The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together. Information may be withheld from the public under the common law right of privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). Employee privacy under section 552.102 is significantly narrower than common law privacy under section 552.101, however, because of the greater public interest in the disclosure of information relating to public employees. *See* Open Records Decision Nos. 470 (1987), 444 (1986), 423 (1984). Generally, section 552.102 protects only that information that reveals "intimate details of a highly personal nature." *See* Open Records Decision No. 315 (1982)

In this instance, the city acknowledges and we agree that there is a legitimate public interest in the official conduct of the city employees to whom the information in question pertains. Therefore, upon careful review, we conclude that the requested information relating to ethics complaints about city employees is not excepted from disclosure under section 552.101 or 552.102 in conjunction with common law privacy. *See* Open Records Decision Nos. 484 (1987) (interest in knowing how police departments resolve complaints against officers ordinarily outweighs officers' privacy interests), 473 (1987) (unfavorable evaluation is not highly intimate or embarrassing fact about public employee's personal affairs), 470 (1987) (public employee's job performance generally does not constitute private affairs), 444 (1986)

(public has obvious interest in information about qualifications and performances of law enforcement personnel). Therefore, the city must release the requested information.

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).

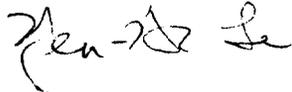
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" being the most prominent.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 151615

Enc. Submitted documents

c: Ms. Funmi Okunbolade
9010 Markville Drive #1103
Dallas, Texas 75243
(w/o enclosures)