



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 29, 2003

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2003-0608

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175657.

The City of McAllen (the "city") received two requests from the same requestor for the names and addresses of individuals that have applied to take the firefighter examination, as well as the name of the testing company conducting the examination. You state that the city will release the names of the applicants and the testing company. However, you claim that the addresses of the applicants are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your argument that the request for information "constitutes a request for information not in possession of the City at the time of the request." The request for information asks that the city "wait until the end of your application period" before releasing the requested information. We agree that the request for information seeks information that did not exist at the time of the request. We note that the Public Information Act (the "Act") does not require the city to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). Furthermore, the Act does not require a governmental body to prepare new information in response to a request. *See, e.g.*, Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). Likewise, the Act does not require a governmental body to inform a requestor if responsive information comes into existence after a request is made. Open Records Decision No. 452 at 3 (1986).

We will now address the information that was in existence at the time of the request for information. You acknowledge that the city has not sought an open records decision from this office within the ten business day time period as prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. However, you assert that "the request herein was not addressed to the proper officer for public information." We conclude that, in general, a written request for information need not be addressed to a governmental body's public information officer in order for the requirements of the Act to be triggered. Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *but see* Gov't Code § 552.301(c) (A request made by electronic mail or facsimile transmission must be addressed to the officer for public information or the officer's designee.). A written communication that can be judged to be a request for public information is a request for information sufficient to initiate the requirements of the Act. ORD Nos. 497 at 3, 44 at 2. Therefore, the requestor's written requests for information were sufficient to trigger the Act. *See id.* Accordingly, you failed to timely request an open records decision from this office pursuant to section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Thus, we will address your argument under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. Information is protected under the common-law right to privacy when (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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, we note that home telephone numbers, home addresses, and personal information are ordinarily not private information subject to section 552.101. *See* Open Records Decision Nos. 554 (1990), 448 (1986); *but see* Open Records Decision 169 (1977) (describing special circumstances under which certain home addresses are private). Upon review of your

arguments, we conclude that you have failed to establish that the requested addresses are protected under the common-law right to privacy. Therefore, the requested addresses may not be withheld under section 552.101.

However, if the requested addresses belong to current or former city employees, the addresses may be excepted under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. 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). Additionally, we note that section 552.117 does not protect the personal information of applicants unless those applicants are current or former city employees who timely requested that their information be kept confidential under section 552.024. Therefore, if a section 552.024 request for confidentiality was made prior to the city's receipt of the instant request for information, you must withhold these employees' home addresses pursuant to section 552.117. However, if the request for confidentiality was not made prior to the department's receipt of the instant request for information, section 552.117 is inapplicable to these employees and the requested home addresses must be released. Finally, if the applicants at issue are not current or former city employees, the addresses may not be withheld under section 552.117 and must be released to the requestor.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 175657

c: Don McNea Fire School, Inc.
13917 Trenton Oval
Cleveland, Ohio 44136
(w/o enclosures)