



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2003

Ms. Tiffany Haertling
Philips & Hopkins, P.C.
P.O. Box 2027
Denton, Texas 76202-2027

OR2003-6938

Dear Ms. Haertling:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188732.

The City of Krum (the "city"), which you represent, received a request for the following information concerning the city's fire department: "bylaws (inspect), copy of books, information of board meetings [and] where it is posted, minutes for last 3 meetings, [and] bids on ambulance." You indicate that the only responsive records the city maintains are the requested minutes. *See 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) (governmental body not required to disclose information that does not exist at time request is received or create new information in response to request). You claim that a marked portion of the minutes is excepted from disclosure pursuant to section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the information you seek to withhold appears to be a portion of the minutes of a public meeting of a governmental body. The minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute. *See Gov't Code* §§ 551.022 (minutes and tape recordings), 551.043 (notice). Information made public by statute may not be withheld from the public under any of the Public Information Act's exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, to the extent the information you seek to withhold constitutes minutes of a public meeting of a governmental body, it must be released in accordance with the Open Meetings Act. *See Gov't Code* § 551.022. To the extent this information is not part of the minutes of an open meeting of a governmental body, we will address your arguments regarding section 552.102.

Section 552.102(a) of the Government Code excepts from public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” This exception is designed to protect public employees’ personal privacy. The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101; the information must 1) contain highly intimate or embarrassing facts about a person’s *private* affairs, such that its release would be highly objectionable to a reasonable person, and 2) be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.–Austin 1983, writ ref’d n.r.e.). Because of the greater legitimate public interest in matters involving employees of governmental bodies, privacy under section 552.102 is confined to information that reveals “intimate details of a highly personal nature.” Attorney General Opinion JM-229 at 2 (1984); *see also* Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Thus, public employee privacy under section 552.102 is “very narrow.” *See* Open Records Decision Nos. 400 at 5 (1983), 336 (1982); *see also* Attorney General Opinion JM-36 (1983).

Having reviewed the information you seek to withhold, we conclude that it neither constitutes “information in a personnel file” nor does it concern “intimate details of a highly personal nature;” therefore, it may not be withheld pursuant to section 552.102. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee’s qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, the submitted information must be released to the requestor in its entirety.

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

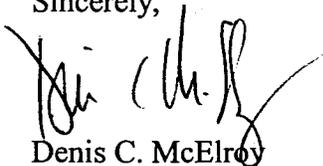
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 188732

Enc. Submitted documents

c: Ms. Alice M. Carr
10 West Sharon
Krum, Texas 76249
(w/o enclosures)