



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2003

Ms. Elizabeth Lutton  
Senior Attorney  
City of Arlington  
P.O. Box 90231  
Arlington, Texas 76004-3231

OR2003-8053

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 190783.

The City of Arlington (the "City") received a request for six categories of information, including city personnel policies and information relating to a specified audit investigation. You inform us that the City will provide the requestor with a copy of the City Personnel Policies and Procedures manual. Further, you advise us that the City does not possess information responsive to categories two and four of the request.<sup>1</sup> You assert that information responsive to categories one, three, and five of the request is excepted from disclosure under section 552.116 of the Government Code. We reviewed the representative sample of information you submitted and considered the exception you claim.<sup>2</sup>

In Senate Bill 1581, which became effective on June 18, 2003, the Seventy-eighth Legislature amended section 552.116 of the Government Code. As amended, section 552.116 provides, in pertinent part, as follows:

---

<sup>1</sup> The Act does not require a governmental body to disclose information that does not exist at the time a request is received or to create new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup> We assume 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 and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, or a municipality is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Act of May 28, 2003, 78<sup>th</sup> Leg., R.S., ch. 379, § 1, 2003 Tex. Sess. Law Serv. 1604 (to be codified as amendment to Gov't Code § 552.116). A governmental body that invokes section 552.116 must demonstrate that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. You state that the submitted documents constitute audit working papers; however, you have not identified the applicable statute, if any, that authorized or required the audit. Thus, we find that you have not sufficiently demonstrated that the information at issue was prepared or maintained by the state auditor or the auditor of a state agency, an institution of higher education, a county, or a municipality in conducting an audit authorized or required by a statute of this state or the United States. *See* Gov't Code §§ 552.116(a), (b)(1), (b)(2). Therefore, the City may not withhold the submitted information under section 552.116 of the Government Code. However, as we note the applicability of sections 552.101 and 552.137 of the Government Code to the submitted information, we will address these exceptions.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the

---

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions such as 552.101 and 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types 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. In addition, this office has found that some medical information or information indicating disabilities or specific illnesses warrants protection under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In this instance, the submitted documents contain information protected by common-law privacy. Therefore, the City must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, section 552.137 of the Government Code governs some of the submitted information. This provision states the following:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
  - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
  - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
  - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
  - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of May 30, 2003, 78<sup>th</sup> Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a business's general e-mail address or a government employee's work e-mail address. Also, e-mail addresses encompassed by subsection 552.137(c) are not excepted from disclosure under section 552.137.

The submitted information contains e-mail addresses of members of the public. You do not inform us that any member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, we conclude the City must withhold the e-mail addresses we have marked under section 552.137(a) of the Government Code.

In summary, the City must withhold the information we have marked under section 552.101 and common-law privacy. The City must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The City must release the remainder of the submitted information to the requestor.<sup>4</sup>

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

---

<sup>4</sup> We note some of the submitted information that the City must release may be subject to section 552.117 of the Government Code. In this instance, the requestor has a special right of access to her own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (providing that a person has a special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Because some of the information released to the requestor may be excepted from disclosure with respect to the general public, in the event the City receives another request for this information from someone other than this requestor or her authorized representative, the City must request another decision from this office.

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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg