



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

OR2005-05538

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "PIA"), chapter 552 of the Government Code. Your request was assigned ID# 226524.

The City of El Paso (the "City") received a request for copies of the financial statements of three candidates for election to City office for the City's May 7, 2005, general election. You inform us that the requested statements are filed with the City Clerk and that the requestor has viewed the requested statements in the City Clerk's office. You claim that copies of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You argue that section 145.007(b) of the Local Government Code prohibits the Clerk from releasing copies of the requested financial statements.

Chapter 145 of the Local Government Code concerns financial disclosure by and standards of conduct for local government officers.¹ See Loc. Gov't Code ch. 145. A municipal officer

¹Chapter 145 of the Local Government Code applied beginning on January 1, 2005. See Act of June 2, 2003, 78th Leg., R.S. ch. 249, § 6.06, 2003 Tex. Gen. Laws 1123, 1157.

or a candidate for a municipal office filled by election must timely file a financial statement with the clerk or secretary of the municipality in which the candidate resides. *See id.* §§ 145.003, .004. The clerk must require filers to use the form designed by the Texas Ethics Commission under chapter 572 of the Government Code. *See id.* § 145.005. Subsection (a) of section 145.007 states that the financial statements filed under chapter 145 are public records. *See id.* 145.007(a). You nevertheless argue that subsection (b) of section 145.007 restricts the requestor's right to obtain a copy of the requested financial statements. Section 145.007 reads as follows:

(a) Financial statements filed under this chapter are public records. The clerk or secretary of the municipality shall maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) Until the first anniversary of the date a financial statement is filed, each time a person, other than the clerk or secretary of the municipality or an employee of the clerk or secretary who is acting on official business, requests to see the financial statement, the clerk or secretary shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The clerk or secretary shall retain that statement in the file until the first anniversary of the date the requested financial statement is filed.

(c) The clerk or secretary of the municipality may, and on notification from a former officer or candidate shall, destroy any financial statements filed by the officer or candidate after the second anniversary of the date the person ceases to be an officer or candidate, as applicable.

Id. § 145.007. Thus, subsection (a) declares that the financial records filed under chapter 145 are public records and requires the clerk or secretary to maintain the statements in separate alphabetical files in a manner accessible to the public during regular office hours. *See id.* § 145.007(a). Subsection (b), then, imposes a duty on the clerk to place in the file for each financial statement certain information about a "person," defined as someone other than the clerk or secretary of the municipality or an employee of the clerk or secretary who is acting on official business, who requests to see the statement on file with the Clerk. The Clerk must keep the person's information in the file for a year after the date the financial statement was filed. *See id.* § 145.007(b). You contend that, because subsection (b) requires the Clerk to keep a record of any person who asks the Clerk to allow him or her to see the statements, the intent of subsection (b) is for the Clerk to identify every person who ever views a statement and memorialize the record of every viewing of the statements until the destruction of the records. You argue that this intent is thwarted by the release of copies of the financial statements because any person who obtains a copy of the statement can circulate the copy to any number of persons whose identities will be unknown and

unrecorded and thereby render meaningless the requirement in subsection (b) that the Clerk record information about a person who accesses the statements. You therefore argue that subsection (b) restricts the requestor's right to obtain a copy of the information and, consequently, section 552.101 excepts copies of the financial statements from required public disclosure.

It is true that, with the release of a copy of a requested financial statement, the Clerk cannot control the subsequent release of the information to the public or keep track of the persons who obtain access to or copies of the statements from someone other than the Clerk, such as a requestor who has obtained a copy. The Clerk's duty to keep track of the persons who ask "to see" the statements can only be in regard to the statements that are under her control, that is, the statements that are on file in her office. That the Clerk loses track of who sees the statements as a result of a requestor's subsequent release of the statements is not a violation of her duty under subsection (b).

What is important to note about subsection (b) is that the provision does not prohibit the Clerk from releasing a copy of the financial statement. In fact, subsection (b) is silent concerning the Clerk's duty to produce a copy of a requested statement. From this silence and from the provision's record-keeping requirements for the clerk for all in-office viewings of the statements, we cannot infer that copies of the statements are confidential. To fall within section 552.101, statutory confidentiality will not be inferred from the statutory structure; a statute must explicitly require confidentiality. *See* Open Records Decision No. 465 (1987). Thus, we find that section 145.007(b) does not make the copies confidential under statutory law and, therefore, section 552.101 does not except such copies from required public disclosure.

Furthermore, it does not follow that the legislature intended the Clerk to deny a requestor a copy of the statement for other reasons based on the statutory construction rules concerning conflicting statutes, as you suggest. Under the PIA, the general duty of each officer for public information is to "make public information available for inspection and copying."² *See* Gov't Code § 552.203(1). Section 552.221(a) of the Government Code elaborates on that duty:

²The PIA places responsibility for compliance with the governmental body's officer for public information. *See id.* §§ 552.203 (general duties of officer for public information), .204 (scope of responsibility of officer for public information), .221 (production of public information), .353 (public information officer's criminal liability for negligent failure or refusal to provide access to or copying of public information). The chief administrative officer of a governmental body is the officer for public information, except that each elected county officer is the officer for public information of the information created or received by that county officer's office. *Id.* § 552.201.

- (a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer.

Id. § 552.221(a). Thus, the duty of the public information officer is to promptly produce public information so that the requestor may inspect the information, copy the information, or both inspect and copy the information, whichever the requestor chooses. *See id.* § 552.221(a); Open Records Decision No 512 at 1 (1988) (holding under predecessor provisions that PIA gives requestor option to take notes from original documents, to pay for copies of public records, or both). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore v. Collins*, 897 S.W.2d 496, 501 [Tex. App.—Houston [1st Dist.] 1995, no writ]; *see also* Gov't Code § 552.353(a) (providing criminal penalty if public information officer or officer's agent, with criminal negligence, "fails or refuses to give access to, or to permit or provide copying of, public information to a requestor as provided by [PIA].").

You argue that under the rules for statutory construction, the more specific provision, which you contend is section 145.007(b) in this case, should prevail over the more general provisions of the PIA. We understand you to reference section 311.026 in the Code Construction Act, which provides:

- (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.
- (b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Gov't Code § 311.026. You also refer to section 312.014(a) of the Government Code, which provides that, "If statutes, enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails."³ *See id.* § 312.014(a). However, in this case, we believe it is unnecessary to resort to these rules of statutory construction. The provisions do not conflict and are not irreconcilable. The PIA requires the clerk to produce copies of the financial statements, if requested. *See id.* § 552.203(1), .221(a), .353(a). Section 145.007(b) does not prohibit the clerk from producing copies of the financial statements. *See* Loc. Gov't Code § 145.007(b).

³Chapter 312 of the Government Code applies to the construction of all civil statutes rather than of codes enacted by the legislature. *See* Gov't Code § 312.001.

Thus, we conclude that the PIA requires the Clerk to provide copies of the requested financial statements to the requestor. The City is not responsible for the requestor's use of the information. *See* Gov't Code § 552.204.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink, appearing to read "Kay Hastings", with a long horizontal flourish extending to the right.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 226524

Enc: Submitted documents

c: Mr. Martin Paredes
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(w/o enclosures)