



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 5, 2005

Ms. A. S. McHugh
Assistant City Attorney
City of Cedar Park
1103 Cypress Creek Road, Suite 102
Cedar Park, Texas 78613

OR2005-07082

Dear Ms. McHugh:

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# 229703.

The City of Cedar Park (the "city"), which you represent, received a request for information pertaining to the employment of the city manager and information pertaining to an open meetings violation. You inform us that the city sought clarification from the requestor with respect to the information pertaining to the open meetings violation. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You state that the city has not yet received a response from the requestor regarding this part of his request. As such, we do not address in this ruling the availability of any information that may be responsive to that part of the request. With respect to the requested information pertaining to the city manager's employment, you indicate that the city has made some of this information available to the requestor. However, you claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 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 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. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms).

Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The W-4 form submitted as Exhibit B constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

Next, you contend that the Texas Municipal Retirement System form submitted as Exhibit C is confidential under section 855.115 of the Government Code. Section 855.115(a) protects certain information contained in records that are in the custody of the Texas Municipal Retirement System concerning an individual member, retiree, annuitant, or beneficiary. The document at issue here is in the custody of the city, not the retirement system. Thus, we conclude that the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 855.115(a) of the Government Code.

You also claim that some of the submitted information is subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us, and provide documentation showing, that the city manager elected to keep his information confidential prior to the date on which the city received this request for information. As such, the city must withhold the above listed information, which we have marked, pursuant to section 552.117(a)(1).

Lastly, we address your claim under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information that we have marked pursuant to section 552.130.

In summary: (1) the W-4 form must be withheld pursuant to section 552.101 of the Government Code in conjunction with federal law; (2) the information we have marked must be withheld under section 552.117(a)(1) of the Government Code; (3) the Texas motor vehicle record information that we have marked must be withheld under section 552.130 of the Government Code; and (4) the remaining submitted information 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, 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 229703

Enc. Submitted documents

c: Mr. Mike Ratterree
c/o Ms. A. S. McHugh
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(w/o enclosures)