



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2005

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2005-10240

Dear Mr. Toscano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Public Information Act (the "Act"). Your request was assigned ID# 236333.

The City of Dallas (the "city") received a request for

1. Ruth Steward's dates of appointment and termination, letter of resignation, and nomination of a successor;
2. the same information as above for Carol Brandon;
3. tape of an August 17, 2005 briefing and agenda voting;
4. letters from the Planning Commission/Park Board to Carol Brandon regarding money that was not turned in after a travel advance;
5. copy of a letter maintained in James Fantroy's office without handwritten markings; and
6. Carol Brandon's financial report.

The city asserts the information responsive to items 1, 2, and 6 is excepted from public disclosure under section 552.108 of the Government Code. The city has released the remaining information. We have considered the city's argument and reviewed the submitted

sample of information.¹ We have also received and considered comments submitted by the Federal Bureau of Investigation (the "FBI"). *See* Gov't Code § 552.304.

First, we note that the request is for dates of appointment and termination. Thus, most of the information Exhibits B and C is not responsive to this requested item. This decision addresses these dates only and not the remaining non-responsive information. These dates are subject to section 552.022(a)(2) of the Government Code, which provides as follows:

(a) . . . , the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) . . . dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). Thus, the dates of appointment and termination are public unless made confidential by law. Section 552.108 does not make information confidential; rather, it is a discretionary exception that may be waived by a governmental body. Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, neither the city nor the FBI may withhold the dates of appointment and termination under section 552.108. The city must release the dates of appointment and termination.

As for Carol Brandon's financial disclosure report, we note that the Code of Ethics in the Dallas City Code requires city officials and designated city employees to file the requested disclosure report with the city secretary. Dallas, Tex., Code of Ethics § 12A-19(a). Officials required to submit the report include city plan commission members. *Id.* § 12A-19(a)(1)(B)(iv). The report includes thirteen categories of information, including the name and address of the city official, the names of each family member, the names under which family members do business, names of employers of family members, source of income of family members, property ownership by any family member, debts owed by a family member, and persons or entities who owe a family member debt. *Id.* § 12A-19(b)(2). Family members of the city official include spouses and dependents. *Id.* § 12A-19(b)(1)(A).

Section 12A-19(f)(1)(F) provides the city secretary shall make the report "available for public inspection and copying at reasonable times." *Id.* § 12A-19(f)(1)(F). Thus, the city code states the requested report is a record available in its entirety to the public. However,

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

the city seeks to withhold the report under section 552.108. In addition, information that reveals whether an official has family members and a public official's home address is confidential under section 552.117 of the Government Code. We have concluded previously that a home-rule city is authorized to require city officials to file financial disclosure reports, so long as the disclosure ordinance is not inconsistent with the city's charter or state law. Attorney General Opinion H-969 (1977). Any ordinance that conflicts with the Act, therefore, would be of no effect. *See* Attorney General Opinion H-1070 at 5 (1977); Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by the Act), 263 (1981) (city ordinance may not conflict with the Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (agency rule may not make information confidential in circumvention of the Act).

The Act provides that public information in the possession of a governmental body must be made available to the public unless it is excepted from disclosure. Gov't Code §§ 552.007, .021. Two such exceptions are sections 552.108 and 552.117 of the Government Code. Section 552.108 excepts from public disclosure information held by a law enforcement agency that deals with the detection, investigation, or prosecution of crime. *Id.* § 552.108. As we stated, section 552.108 is a discretionary exception that may be waived by a governmental body. Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Section 552.117 excepts from required public disclosure the home addresses and information revealing whether a public official has family members when those officials request that this information be kept confidential under section 552.024 prior to the date on which the request for this information was made. *Id.* § 552.117. Section 552.117 is a mandatory exception that protects information which a governmental body is prohibited from releasing subject to criminal prosecution. *Id.* §§ 552.007, .352; *see* Open Records Decision Nos. 455 (1987), 344 (1982), 325 (1982). Therefore, we must consider whether the city must release information pursuant to a city ordinance when the information is also excepted under the Act.

Because the city's ordinance may conflict with the requirements of the Act, we must examine whether section 12A-19(f)(1)(F) has been preempted by either section 552.108 or section 552.117 of the Government Code. Open Records Decision Nos. 594 at 2-3 (1991), 263 (1981). We recognize that home-rule cities have broad discretionary powers, provided that no ordinance "shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. art. XI, § 5; *Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993). Home-rule cities possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power. *Id.* An ordinance of a home-rule city that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *see City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982), *cert. denied*, 459 U.S. 1087 (1982). However, "the mere fact that the legislature has enacted a law addressing a subject does not mean the complete subject matter is completely preempted." *Dallas Merchant's & Concessionaire's*

Ass'n, 852 S.W.2d at 491; *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990). “[A] general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached.” *City of Beaumont v. Fall*, 116 Tex. 314, 291 S.W. 202, 206 (1927). Thus, if the Legislature chooses to preempt a subject matter usually encompassed by the broad powers of a home-rule city, it must do so with unmistakable clarity. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; see *City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964).

In this instance, however, we need not determine whether section 552.108 preempts the city's disclosure ordinance because we do not believe that the two provisions conflict. Attorney General Opinion H-1070 at 5 (1977). As we previously stated, section 552.108 is a discretionary exception that the city may waive. By enacting the ethics ordinances, the city has determined that the public has an interest in this type of financial information. Thus, we find that the city has chosen to waive the applicability of section 552.108 to its financial disclosure statements. Moreover, once the city has made nonconfidential information available to the public, it must release the information to any other member of the public and may not subsequently withhold the information under a discretionary exception. Gov't Code § 552.007 (once entity voluntarily makes nonconfidential information available to public, it must be made available to any person). Likewise, the FBI cannot assert section 552.108 for the nonconfidential information because such information has been made public by section 12A-19(f)(1)(F).

Release of information within the report revealing a city official's home address and whether the official has family members, however, presents a conflict between application of the city's ordinance and section 552.117 of the Government Code. The Legislature, by enacting section 552.117, meant to protect from required public disclosure the home addresses and information revealing whether a public official has family members when the officials request that this information be kept confidential under section 552.024 of the Government Code. We find that the Legislature has with unmistakable clarity required governmental bodies to withhold a public official's home address and information revealing whether the official has family members when they have requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1986)). But see Open Records Decision No. 516 (1989) (governmental body may not invoke section 552.117 to withhold information when another governmental body is expressly authorized to obtain it).

Because section 12A-19(f)(1)(F) of the city's Code of Ethics would mandate the release of this information when contained on the required financial disclosure report, the ordinance conflicts with section 552.117. Release under the ordinance would deprive city officials certain protections granted them by the Legislature. We believe the ordinance to be unenforceable to the extent it conflicts with section 552.117. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; Open Records Decision Nos. 594 at 3 (1991), 263 at 2 (1981). Consequently, the city must redact the section 552.117 information on the

financial disclosure report if the commissioner requested that this information be kept confidential under section 552.024 of the Government Code prior to the date on which the request for this information was received. The remaining information in the financial disclosure report must be released. Notwithstanding the limited ruling here, city officials and employees must continue to comply with all state and local disclosure and conflicts of interest provisions.

Lastly, the letter responsive to item 5 contains the commissioner's home address. As stated, her home address may be confidential under section 552.117(a)(1) if she timely elected to deny access to the information under section 552.024.

In summary, the city must withhold the commissioner's section 552.117 information if she has requested that this information be kept confidential under section 552.024 of the Government Code prior to the date on which the request for this information was received. The remaining responsive information must be released.

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 Office of the Attorney General 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. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 236333

Enc: Marked documents

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