



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2005

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2005-10462

Dear Ms. Silver:

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# 236679.

The City of Dallas (the "city") received a request for D'Angelo Lee's file. The city is releasing Mr. Lee's resume, criminal history statement, and correspondence regarding any unpaid obligations to the city. However, the city asserts the submitted information is excepted from public disclosure under section 552.108 of the Government Code. 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, Exhibit B includes the minutes of open meetings. The minutes of an open meeting are public records pursuant to the Open Meetings Act. Gov't Code § 551.022 (minutes and tape recordings). Information that a statute other than chapter 552 of the Government Code expressly makes public is not subject to the exceptions found in chapter 552. Open Records Decision No. 623 at 3 (1994). Thus, the city must release the open meeting minutes.

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.

Next, we consider the city's arguments for the disclosure of conflict statements. These statements are subject to section 552.022(a)(15) 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:

... }

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The city explains that it is the city's policy that these statements are open to the public. Thus, the statements 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 disclosure of conflict statements under section 552.108. The city must release the disclosure of conflict statements.

As for the financial disclosure reports, we note that the Code of Ethics in the Dallas City Code requires city officials and designated city employees to file the requested disclosure reports with the city secretary. Dallas, Tex., Code of Ethics § 12A-19(a). Officials required to submit the reports include city plan commission members. *Id.* § 12A-19(a)(1)(B)(iv). The reports include 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 reports "available for public inspection and copying at reasonable times." *Id.* § 12A-19(f)(1)(F). Thus, the city code states the requested reports are records available in their entirety to the public. However, the city seeks to withhold the reports 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 reports 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 any information on the financial disclosure reports which reveals the commissioner's home address and whether he has family members because he 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 made. The remaining information in the financial disclosure reports 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.

We note that the criminal history statement which the city is releasing also contains information made confidential by section 552.117(a)(1). We have marked the information the city must withhold. Furthermore, the city must withhold the Texas driver's license

number contained in the criminal history statement under section 552.130. Gov't Code § 552.130 (section 552.130 excepts information relating to Texas driver's license).

Lastly, we consider the city's section 552.108 argument for the remaining information. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information. The FBI objects to the release of the information because it relates to the FBI's pending criminal investigation. We agree that release of the remaining information at this time would interfere with the ongoing investigation. Therefore, the city may withhold the remaining information from disclosure under section 552.108(a)(1).

In summary, the city must withhold the commissioner's home address and information revealing whether he has family members under section 552.117. The remaining information in the financial disclosure reports must be released. The city must also release the open meeting minutes under section 551.022 and the disclosure of conflict statements under section 552.022(a)(15). The city may withhold the rest of the submitted information under section 552.108(a)(1). Lastly, the city must withhold the section 552.117 and section 552.130 information in the criminal history statement.

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

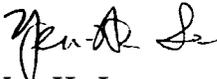
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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# 236679

Enc: Marked documents

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