



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2005

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2005-11276

Dear Ms. Valkavich:

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# 238015.

The City of San Antonio (the "city") received a request for a specific investigative report. You state that some of the requested information will be released, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us that the city received this request on September 23, 2005, and requested clarification on the same date. *See id.* § 552.222(b) (governmental body may ask requestor to clarify or narrow request). The requestor responded to the request for clarification on September 29, 2005. *See* Open Records Decision No. 663 at 5 (1999) (section 552.301 deadlines tolled during clarification process). The arguments you raised pursuant to section 552.101 in your letter dated October 6, 2005 were timely. However, you did not assert sections 552.117 and 552.137 until October 14, 2005. Consequently, we find that the city failed to assert sections 552.117 and 552.137 in accordance with section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because sections 552.117 and 552.137 can provide compelling reasons to withhold information, we will address your arguments concerning those exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. You claim that some of the submitted information should be withheld on this basis. You inform us that this information relates to an investigation into the actions of a former city employee while he was still employed with the city. The doctrine of common law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the submitted information and marked personal financial information, medical information, and information which identifies the victim of an alleged sexual assault, that must be withheld under the doctrine of common law privacy in conjunction with section 552.101. However, we find that there is a legitimate public interest in the actions of a city employee that affect official city business. Therefore, none of the remaining information is confidential under common law privacy, and the city may not withhold it on that basis.

Next, you assert that section 552.117 of the Government Code may be applicable to some of the submitted information. 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 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. The city may not withhold this information under section 552.117 if a timely election was not made. We have marked the information that must be withheld under section 552.117 if that section is applicable. We also note that the submitted videotapes contain references to an employee's personal information; therefore, the city must also withhold these references under section 552.117 if that section is applicable. If the city is unable to redact these references in the submitted videotapes, then the city must withhold the tapes in their entirety pursuant to section 552.117 if that section is applicable. *See* Open Records Decision No. 364 (1983).

We note that the submitted information contains the former employee's social security number. Even if the former employee in question did not make a timely election under section 552.024, his social security number must be withheld under section 552.147 of the Government Code. Section 552.147¹ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security number contained in the submitted information under section 552.147.²

We also note that the submitted information contains an account number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. In accordance with section 552.136 of the Government Code, the city must withhold the account number that we have marked in the submitted documents.

Finally, we address your claim under section 552.137 of the Government Code. This section provides as follows:

- (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.

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

(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.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. Accordingly, the city must withhold the private e-mail addresses we have marked in accordance with section 552.137 unless the city receives consent for their release. We note that the submitted information also contains work e-mail addresses that may belong to employees of an entity with which the city has a contractual relationship. *See* Gov't Code § 552.137(c)(1). Because we are unable to discern whether these e-mail addresses fall within the scope of section 552.137(c), we must rule conditionally. To the extent the work e-mail addresses at issue belong to members of the public who have not affirmatively consented to their release, the city must withhold these e-mail addresses under section 552.137. However, to the extent the work e-mail addresses at issue belong to employees of an entity with which the city has a contractual relationship, the e-mail addresses may not be withheld under section 552.137.

In summary, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy. The city must withhold the information we have marked under section 552.117 of the Government Code if that section is applicable. The city must also withhold references to the former city

employee's personal information in the submitted videotapes under section 552.117 if that section is applicable. If the city is unable to redact these references, then the city must withhold the tapes in their entirety pursuant to section 552.117 if that section is applicable. Even if the former employee in question did not make a timely election under section 552.024 of the Government Code, his social security number must be withheld under section 552.147 of the Government Code. The city must withhold the account number we have marked under section 552.136 of the Government Code. The city must withhold the private e-mail addresses we have marked in accordance with section 552.137 of the Government Code. To the extent the submitted work e-mail addresses belong to members of the public who have not affirmatively consented to their release, the city must withhold these e-mail addresses under section 552.137. However, to the extent the work e-mail addresses belong to employees of an entity with which the city has a contractual relationship, they must be released along with the remaining information.

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); *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 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 238015

Enc. Submitted documents

c: Mr. Greg Jefferson
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