



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2006-05045

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 249120.

The City of Houston (the "city") received two requests request for copies of a named city official's calendar. The second request also seeks e-mails between the staff of the Mayor Pro Tem's office, the named city official, her staff, and other specified city staff members during Fiscal Year 2005 and 2006, as well as employment and pay history information for another named employee. You state that the city will release the requested employment and pay history. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part, as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, 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:

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.

...

(5) all working papers, research material, and information used to estimate the need for of expenditure of public funds or taxes by a governmental body, upon completion of the estimate[.]

Gov't Code § 552.022(a)(5). Much of the submitted information consists of working papers, research materials, and information used to estimate the need for the expenditure of public funds by the city. Therefore, as prescribed by section 552.022, the city must release this information unless it is confidential under other law. You argue that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code. However, section 552.108 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the city may not withhold this information under section 552.108 of the Government Code. Sections 552.101, 552.117, and 552.137 of the Government Code do constitute other law for purposes of section 552.022; therefore, we will consider the applicability of those exceptions to the information subject to section 552.022(a)(5).

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. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is generally protected by common law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common law privacy). We have marked the portions of the submitted information that must be withheld under section 552.101 and common law privacy.

The information that is subject to section 552.022(a)(5) also contains e-mail addresses obtained from the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential. Section 552.137 provides:

(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.

(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. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The city must, therefore, withhold e-mail addresses of members of the public under section 552.137, unless any of the disclosure provisions of subsection 552.137(c) apply to this information.

We now address your arguments under section 552.108 of the Government Code for the remaining submitted information not made public under section 552.022(a)(5). Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte*

Pruitt, 551 S.W.2d 706 (Tex. 1977). You have submitted statements from the Harris County District Attorney's Office explaining that the submitted information pertains to a pending criminal investigation. Based upon these representations, we conclude that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. The city must also withhold the e-mail address we have marked under section 552.137 of the Government Code, assuming none of the disclosure provisions of subsection 552.137(c) apply to this information. The city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.² The remaining submitted information must be released pursuant to section 552.022(a)(5) of the Government Code.

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).

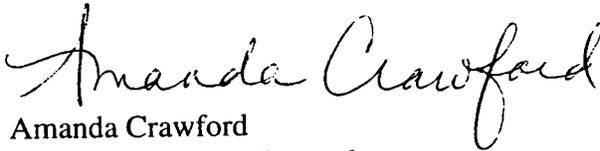
²Because our ruling for this information is dispositive, we need not address your remaining arguments.

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/krl

Ref: ID# 249120

Enc. Submitted documents

c: Mr. Matt Stiles
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)

Ms. Miya Shay
KTRK TV
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)