



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2007

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 368
Houston, Texas 77001-0368

OR2007-01159

Dear Mr. Gambrell:

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# 270352.

The Houston Fire Department (the "department") received a request for information pertaining to a specified high rise building, including: (1) a copy of the high-rise fire safety plans, (2) names, company, and certification dates of certified property managers and tenant fire wardens for the specified high-rise buildings, (3) a list of all fire drills conducted at the building in the last year. Although you take no position regarding the public availability of the requested information, you believe that this information, which pertains to property owned and managed by 1415 Louisiana Ltd. and WEDGE Properties Management, Inc. (collectively, "Wedge"), may implicate the third party's proprietary interests. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the department notified Wedge of the request for information and of its right to submit arguments explaining why the requested information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have reviewed the submitted information and considered Wedge's submitted arguments.¹

Section 552.101 exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This

¹To the extent any additional responsive information existed on the date the system received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

exception encompasses information that another statute makes confidential. Wedge raises section 552.101 in conjunction with section 418.182 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. These provisions make certain information related to terrorism confidential. Section 418.182 provides:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov't Code § 418.182(a). Section 418.182 refers to a security system located on the premises, such as an alarm system or a security camera system. The High Rise Office Building Fire Safety Plan you have submitted is a plan of action to ensure the safety of building occupants under emergency circumstances. However, it is not a security system as contemplated by section 418.182. Furthermore, the plan does not contain information about a security system installed on the premises. Thus, the submitted information is not confidential under section 418.182 and may not be withheld under section 552.101 of the Government Code on that basis.

We note that some of the submitted information is protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code. The common-law right of privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the personal information of building tenants that the department must withhold pursuant to section 552.101 in conjunction with common-law privacy. As Wedge raises no further exceptions to disclosure, 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).

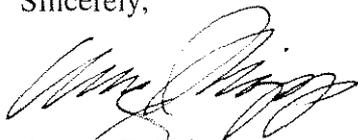
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/krl

Ref: ID# 270352

Enc. Submitted documents

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