



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2007

Ms. Carey Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2007-08481

Dear Ms. Grace:

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# 282687.

The City of Austin (the "city") received a request for all information pertaining to the investigation and subsequent demotion of the requestor resulting from a grievance submitted to Austin Energy's Human Resources Department in February 2007. You claim that the portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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.*

¹We note that you have submitted certain documents to this office for informational purposes. Because you do not indicate this information is responsive to the request, we do not address it in this ruling.

Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). We note that the information in question concerns employees of the city and their conduct in the workplace. As this office has often stated, the public generally has a legitimate interest in information relating to public employees and public employment. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest).

We note, however, that information also may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In this instance, you argue special circumstances warrant withholding portions of the submitted information. You are concerned that releasing the information at issue could endanger complainants and witnesses. Upon review, we determine you have failed to demonstrate that release of the submitted information would place any of the complainants or witnesses in any imminent danger of physical harm. Accordingly, as you have not established the existence of special circumstances, you may not withhold any of the submitted information on that basis under section 552.101.

We note that some of the submitted information may be excepted from public disclosure under section 552.117(a)(1) of the Government Code.² 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 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for the information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). In this case, you neither inform us nor provide documentation showing that the employees whose personal information is at issue timely elected confidentiality under section 552.024. Nevertheless, to the extent that these employees timely elected to keep their personal information confidential, you must withhold the information that we have marked under section 552.117(a)(1) of the Government Code.

²The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The city may not withhold this information under section 552.117(a)(1) if the employees did not make a timely election to keep the information confidential. The remaining 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,

A handwritten signature in black ink, appearing to read 'J. Flores', written in a cursive style.

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/ma

Ref: ID# 282687

Enc. Submitted documents

c: Mr. Daniel Alvarez
P.O. Box 202
Luling, Texas 78648
(w/o enclosures)