



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2007

Ms. Nancy O. Williams
Senior Assistant City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2007-12437

Dear Ms. Williams:

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# 294112.

The City of Irving (the "city") received a request for the employment application and last evaluation of a named city employee. You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The city asserts that portions of the submitted information are excepted from public disclosure under section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The city does not cite to any specific law that makes any portion of the submitted information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Therefore, we conclude that the city may not withhold any portion of the submitted information under section 552.101 of the Government Code.

Next, we address your argument that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, 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. Gov't § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that the employee at issue elected to keep his information confidential prior to the time that the city received the instant request for information. Thus, the city must withhold the personal information that you have marked, as well as some additional information that we have marked, pursuant to section 552.117(a)(1) of the Government Code.

We note that section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Thus, you must withhold the information that we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the marked information under sections 552.117(a)(1) and 552.130 of the Government Code. The remaining information must be released.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 294112

Enc. Submitted documents

c: Mr. S. Paul Jordan
1519 Arcady Lane
Irving, Texas 75061
(w/o enclosures)