



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2007

Mr. Rashaad Gambrell
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-12456

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# 288828.

The City of Houston (the "city") received six identical requests for information pertaining to six different city employees, seeking information relating to their personal qualifications, applications, financial statements, job requirements, income sources, political affiliations, expense reports, and the employment of their relatives. The city states that it is not the custodian of records for voter registration information or information regarding political party affiliation. You state that you will make some information available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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.

Initially, we note that the city's Code of Ordinances requires city officials to file the submitted financial disclosure statements with the city secretary. Houston, Tex., Code of Ordinances § 18-21(b) - (e). Officials required to submit the statements include elected officials, certain appointed or executive level employees, and assistant city attorneys. *Id.* §§ 18-2, 18-21(a). The statements include fourteen categories of information, including the names and addresses of the city officials or employees and the names of all members of their household, all sources of income over \$250.00 within the household, ownership of publicly traded stock or any business ownership by the household, property ownership by any member of the household, contractual financial liabilities of the household, and all household memberships on boards of directors. *Id.* § 18-21(g). Reports of cash value or interest may be reported within one of seven category levels in the statements. *Id.* § 18-21(h). Members of the city officials' or employees' household include spouses, children, parents, or any other relatives. *Id.* § 18-2.

The submitted financial disclosure statements, by city ordinance, are records available in their entirety to the public. Section 18-22 of the city's Code of Ordinances provides:

All financial disclosure statements required by this article shall be sworn and shall constitute public records. The city secretary shall maintain such statements in a manner that is accessible to the public during regular business hours.

Id. § 18-22. You state that the submitted financial disclosure statements contain personal financial information and asset and income source information for city employees. This office has held that similar information was protected from disclosure. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). There is also an issue regarding whether the city may release the statements as required by ordinance even though some of the information reveals whether these city employees have family members, as well as home address information. Gov't Code § 552.117.

We note that the city, as a home-rule city, is empowered to enact ordinances governing matters of local concern. The city has made a legislative determination that public confidence in their elected city officials and executive level employees is enhanced by the public's knowledge that these city officials are not engaged in conflicts of interest. We have concluded previously that a home-rule city is authorized to require city officials to file financial disclosure statements, so long as the disclosure ordinance is not inconsistent with the city's charter or state law. Attorney General Opinion H-969 (1977). Any ordinance that conflicts with the Act, therefore, would be of no effect. *See* Attorney General Opinion H-1070 at 5 (1977); Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Open Records Act), 263 (1981) (city ordinance may not conflict with Open Records Act); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931

(1977) (agency rule may not make information confidential in circumvention of Open Records Act).

The Act provides that public information in the possession of a governmental body must be made available to the public unless it is excepted from disclosure. Gov't Code §§ 552.007, .021. Two such exceptions are sections 552.101 and 552.117 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees or officials who request that this information be kept confidential under section 552.024. *See* Open Records Decision No. 455 (1987). Both of these provisions are mandatory exceptions that protect information which a governmental body is prohibited from releasing subject to criminal prosecution. Gov't Code 552.007, .352; *see* Open Records Decision Nos. 455 (1987), 344 (1982), 325 (1982). Therefore, we consider whether the city may release information pursuant to a city ordinance when the information is protected from disclosure by a mandatory exception under the Act.

Because the city's ordinance may conflict with the requirements of the Act, we must examine whether section 18-22 has been preempted by either section 552.101 or 552.117 of the Government Code. Open Records Decision Nos. 594 at 2-3 (1991), 263 (1981). We recognize that home-rule cities have broad discretionary powers, provided that no ordinance "shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. art. XI, § 5; *Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993). Home-rule cities possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power. *Id.* An ordinance of a home-rule city that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *see City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 932 (1982). However, "the mere fact that the legislature has enacted a law addressing a subject does not mean the complete subject matter is completely preempted." *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990). "[A] general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached." *City of Beaumont v. Fall*, 116 Tex. 314, 291 S.W. 202, 206 (1927). Thus, if the Legislature chooses to preempt a subject matter usually encompassed by the broad powers of a home-rule city, it must do so with unmistakable clarity. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *see City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964).

In this instance, however, we need not determine whether section 552.101 preempts the city's disclosure ordinance because we do not believe that the two provisions conflict. Attorney General Opinion H-1070 at 5 (1977). As we previously stated, section 552.101 protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld from the public under common-law privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). We now determine whether any of the financial information in the statements is protected by common-law privacy.

We have previously stated that

[i]n our opinion, all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3 (1983); *see* Open Records Decision No. 545 at 4-5 (1990). In fact, several prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of their salary to a voluntary investment program offered by their employer is a personal investment decision, and information about it is generally excepted from disclosure by a common-law right of privacy. ORD 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. ORD 600 (1992) (mandatory state retirement program).

The submitted financial disclosure statements consist of information involving financial transactions between an individual and the governmental body and information relating only to personal investment decisions. Nevertheless, under the facts presented to this office, we conclude that there is legitimate public interest in the financial information at issue. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d at 685 (special circumstances of legitimate public interest). The financial disclosure statements are submitted by a limited number of city officials and employees who make significant city decisions. The statements could provide information about potential conflicts of interest between a decision-maker's

personal financial investments and the city's interests. In fact, the city's ethics and financial disclosure ordinances are predicated on the following policy statement:

It is the policy of the city that all city officials and candidates for city elective office shall act and conduct themselves, both inside and outside the city's service, so as to give no occasion for distrust of their integrity, impartiality, credibility or their devotion to the best interests of the city and the public trust that it holds. To this end, there is established in this chapter an ethics committee for the city. The purpose of the committee is to accept and review complaints of impropriety on the part of city officials and candidates for city elective office, including, but not limited to, conflicts of interest such as use of offices or employment for private gain, the granting and exchanging of favored treatment to persons, businesses, or organizations, and the conduct of activities that engender opportunities to influence government decisions for gain or advantage, or that might otherwise bring discredit on or to the city.

Houston, Tex., Code of Ordinances § 18-1. By enacting the ethics ordinances, the city has determined that the public has an interest in this type of financial information. We find that in the case of the city's financial disclosure statements, significant public interest exists in their disclosure. *See* Attorney General Opinion H-15 at 5-7 (1973); Open Records Decision No. 146 (1976); Open Records Letter No. 94-059 (1994); *see also* Attorney General Opinion H-1070 (1977). Consequently, the financial information contained in the submitted financial disclosure statements is not protected by a common-law right to privacy and section 552.101 is inapplicable. The city's ordinance does not conflict with section 552.101 of the Government Code. Attorney General Opinion H-1070 at 5 (1977).

Release of information within the statements revealing a city employee's home address and whether the employee has family members, however, presents a conflict between application of the city's ordinance and section 552.117 of the Government Code. The Legislature, by enacting section 552.117, meant to protect from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee or official has family members when the employees or officials request that this information be kept confidential under section 552.024 of the Government Code. We find that the Legislature has with unmistakable clarity required governmental bodies to withhold a public employee's home address and information revealing whether the employee has family members when they have requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987) (*citing* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1986)). *But see* Open Records Decision No. 516 (1989) (governmental body may not invoke section 552.117 to withhold information when another governmental body is expressly authorized to obtain it).

Because section 18-22 of the city's Code of Ordinances would mandate the release of this information when contained on the required financial disclosure statement, the ordinance conflicts with section 552.117 of the Government Code. Release under the ordinance would deprive city employees certain protections granted them by the Legislature. We believe the ordinance to be unenforceable to the extent it conflicts with section 552.117 of the Government Code. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; Open Records Decision Nos. 594 at 3 (1991), 263 at 2 (1981). Consequently, the city must redact the information we have marked in the financial disclosure statements which reveals a public employee's home address and whether that employee has family members if the employee has requested that this information be kept confidential under section 552.024 of the Government Code prior to the city's receipt of the requests for information. See Open Records Decision No. 530 at 5 (1989). The remaining information in the financial disclosure statements must be released.

We now turn to the remaining submitted information. You inform us that the employees at issue made elections pursuant to section 552.024. Provided that these elections were made before the requests, with the exception of the race and gender information we have marked for release, the city must withhold the information it has marked, as well as the additional information we have marked pursuant to section 552.117(a)(1). If these elections were not made before the requests, the marked information may not be withheld pursuant to section 552.117(a)(1).²

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. The city must withhold the Texas motor vehicle information it has marked, as well as the information we have marked, pursuant to section 552.130.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See *id.* § 552.137(a)-(c). You state that e-mail address at issue is not excluded by subsection (c) and that the individual at issue has not consented to the release of his e-mail address. Accordingly, the city must withhold the e-mail address it has marked pursuant to section 552.137.

In summary, if the city employees at issue made timely elections for confidentiality, with the exception of the information we have marked for release, the city must withhold the marked

²Section 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.

information pursuant to section 552.117(a)(1). The city must withhold the marked Texas motor vehicle information pursuant to section 552.130. The city must withhold the e-mail address it has marked pursuant to section 552.137. 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,

A handwritten signature in black ink that reads "Kara A. Batey". The signature is fluid and cursive, with a large loop at the end of the last name.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 288828

Enc. Submitted documents

c: Mr. Jim Thompson
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(w/o enclosures)