



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 27, 2007

Ms. Roberta B. Cross  
Assistant City Attorney  
City of Galveston  
P. O. Box 779  
Galveston, Texas 77553-0779

OR2007-15456

Dear Ms. Cross:

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# 295547.

The City of Galveston (the "city") received a request for copies of any Equal Employment Opportunity Commission ("EEOC") complaints directed against the city, the city police department, or against city or police department employees from January 1, 2002 to the present. You claim that the submitted information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code, and in particular, section 552.103. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(e), a governmental body is required to submit to this office

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<sup>1</sup>You inform us that "[i]t is conceivable that additional records not attached as enclosures to this letter may later be recovered from closed storage. However, any such record would be in the nature of the records requested here and subject to the same exceptions and, where appropriate, redactions . . ." We therefore understand you to represent that the submitted information is a representative sample of the requested records as a whole. We thus assume that this "representative sample" of records 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.

within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). The city received the request at issue on September 18, 2007. Accordingly, the 15-day deadline for submitting the information required by section 552.301(e) was October 9, 2007. However, the city did not submit a copy of the written request for information to this office until October 16, 2007. Accordingly, we conclude that the city has failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at (1977). Because the city has failed to comply with the procedural requirements of the Act, the city has waived all of its discretionary exceptions to disclosure, including section 552.103. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions). The city also raises mandatory exceptions to disclosure for the submitted information, and upon review, we find that a portion of the submitted information is subject to sections 552.101 and 552.117 of the Government Code. We will therefore address these exceptions to disclosure. We find that none of the remaining submitted information is subject to any other mandatory exceptions, and you have provided no arguments in support of any such exceptions. *See* Gov't Code § 552.301(e)(1)(A).

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. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and 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. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The type 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. Additionally, we note that a portion of the submitted information relates to allegations of sexual harassment. Pursuant to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the identities of victims of alleged sexual harassment are protected by the common-law privacy doctrine and must be withheld. Therefore, we have marked the identifying information of victims of alleged sexual harassment that is protected by common-law privacy and must be withheld under section 552.101 of the Government Code. However, we conclude that the remaining submitted information does not contain information that is highly intimate and embarrassing. Further, we conclude that it consists primarily of information regarding the employment of the individuals in question and, thus, is of legitimate concern to the public. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Therefore, the remaining information may not be withheld under section 552.101 in conjunction with the common-law right to privacy.

We also note that section 552.101 protects information made confidential by statute. Section 1703.306 of the Occupations Code governs information obtained in the course of conducting a polygraph examination and provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. Occ. Code § 1703.306(a). The remaining information includes information from a polygraph examination. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.117 may also be applicable to some of the submitted information. 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We have marked certain personal information under section 552.117. If the individual to whom the information relates timely elected to keep his personal information confidential, the city must withhold the information we have marked pursuant to section 552.117(a)(1).

To summarize, the city must withhold the information we have marked under section 552.101 in conjunction with common law privacy and section 1703.306 of the Occupations Code. The city must also withhold the information we have marked under section 552.117(a)(1) if the individual at issue made a timely election to withhold such information under section 552.024. The remaining submitted information must be released to the requestor.<sup>2</sup>

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

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<sup>2</sup>We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information as the authorized representative of the individuals to whom the information pertains. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information is confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jb

Ref: ID# 295547

Enc. Submitted documents

c: Mr. Anthony P. Griffin  
A Griffin Lawyers  
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Galveston, Texas 77550  
(w/o enclosures)