



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2008

Ms. Paige H. Saenz
Assistant General Counsel
City of Austin Employees' Retirement System
418 East Highland Mall Boulevard
Austin, Texas 78752-3720

OR2008-11257

Dear Ms. Saenz:

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# 319143.

The City of Austin Employees' Retirement System (the "system") received a request for a listing of the names of all members of the system who retired from the Austin Police Department. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

We initially address your assertion that complying with the request would require the system to compile or manipulate the data. A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See Gov't Code § 552.231; Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information responsive to that request. Section 552.231 prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See Gov't Code § 552.231(a)* (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1)

responding to request for information will require programming or manipulation of data and (2) compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information, or seek a ruling from this office as to whether the information is excepted from disclosure. *See Fish*, 31 S.W.3d at 682. Thus, the system's officer for public information carries the duty of promptly producing such public information when it is requested, unless the department wishes to withhold the information. Gov't Code §§ 552.203, .221. As you timely submitted a request for a ruling as to whether the requested information is excepted from disclosure, we will address your argument.

Section 552.101 of the Government Code protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 13 of article 6243n of Vernon's Texas Civil Statutes. You state the system was established under and is governed by article 6243n, which provides in part:

(a) Information contained in records that are in the custody of the retirement board or the system concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential under this section and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the pension director determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual if the pension director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee if the pension director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee;

(D) the individual's employer as defined in this Act; or

(E) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the pension director determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

V.T.C.S. art. 6243n, § 13(a)-(b). You state the request seeks more than the status or identity of a member, but asks for those retirees who retired from a particular department. You also state the requestor is not an individual who is entitled to the information under subsection (a)(1). Thus, because the request is for members who retired from the Austin Police Department and not a request for the identities of system members only, we conclude the system must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 13 of article 6243n of Vernon's Texas Civil Statutes.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

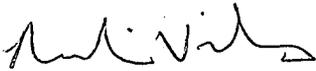
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 319143

Enc. Submitted documents

c: Mr. Randy Malone
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Cedar Creek, Texas 78612
(w/o enclosures)