ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Mr. Dick H. Gregg, III
City Attorney for City of Nassau Bay
Gregg & Gregg, P.C.
16055 Space Center Boulevard., Suite 150
Houston, Texas 77062

OR2009-06555

Dear Mr. Gregg:

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# 343209.

The City of Nassau Bay (the "city"), which you represent, received a request for "the applications and/or resumes of all candidates who have applied for the city's position of city manager." You have redacted social security numbers pursuant to section 552.147 of the Government Code, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.104, and 552.137 of the Government Code.[1] We understand you to raise section 552.101 of the Government Code in conjunction with section 252.049 of the Local Government Code and common-law privacy. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we will address the portions of the submitted information that you have redacted. We note that you have redacted social security numbers. Section 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. *See* Gov't Code § 552.147(b). However, you have also redacted information subject to section 552.130 of the Government Code. Pursuant to section 552.301 of the

[1]Although you raise common-law privacy, we note that sections 552.137 and 552.147 are the correct exceptions to raise for e-mail addresses and social security numbers, respectively.

Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See id.* §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that the city is authorized to withhold the redacted information, with the exception of social security numbers subject to section 552.147, without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. The failure to provide this office with requested information is a violation of section 552.301 of the Government Code because it deprives us of the ability to determine whether information may be withheld. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample),.302. In such instances, this office has no alternative other than to order that the redacted information be released. However, in this instance, because we can generally discern the nature of the redacted information, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling.

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. Section 552.101 encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 252.049 of the Local Government Code, which provides as follows:

> (a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.
>
> (b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Local Gov't Code § 252.049. Thus, section 252.049 provides for confidentiality of certain information in bids or proposals for municipal acquisition, sale, or lease of property. *See generally id.* ch. 252. For such bid or proposal information, the statute duplicates the protection that section 552.110 of the Government Code provides to trade secret and commercial or financial information. However, the information at issue consists of applications for the position of city manager and not information in a bid or proposal for a municipal property transaction. Moreover, the city does not assert, nor has it provided any arguments establishing, that any of the submitted information qualifies as either a trade secret or as confidential commercial or financial information for purposes of section 552.110. *See*

Gov't Code § 552.110(a)-(b). Thus, section 252.049 is inapplicable to the information at issue, and none of it may be withheld under section 552.101 of the Government Code on that basis.

The city also asserts that the submitted information is excepted from disclosure under section 552.104 of the Government Code. This section excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990).

You state that the city "posted a job opening for city [manager] with a range of salary based on experience[, and] received numerous resumes [from] applicants [with] a wide range of experience[.]" You contend that release of the submitted information would "give a competitive advantage to others who apply for the position[, and] put the [c]ity in a competitive disadvantage." Having considered your representations, we find that the city has not established that the submitted information relates to a competitive bidding situation and therefore section 552.104 is inapplicable. Thus, we conclude that the city may not withhold any of the submitted information pursuant to section 552.104 of the Government Code.

You assert that portions of the submitted information are private. Section 552.101 also encompasses the common-law right of privacy, which 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. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. We have marked the information that is intimate or embarrassing and not of legitimate concern to the public.

However, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (home addresses and telephone numbers of private citizens are generally not protected under Act's privacy exceptions). Upon review, we find you have failed to demonstrate how any portion of the remaining information constitutes highly intimate or embarrassing information that is not of legitimate public interest. Therefore, the city must withhold only the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the remaining information contains Texas motor vehicle record information that is subject to section 552.130 of the Government Code.[2] Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). However, section 552.130 is not applicable to out-of-state motor vehicle record information. Therefore, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

Section 552.137 of the Government Code 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). Section 552.137 does not apply to a general business e-mail address nor to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. We note that an e-mail address "provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public" is specifically excluded from the confidentiality provisions of section 552.137(a) by section 552.137(c)(4). *Id.* § 552.137(c)(4). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the marked e-mail addresses. Therefore, unless the city receives consent to release, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, the city must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy; (2) section 552.130 of the Government Code; and (3) section 552.137 of the Government Code, unless the city receives consent to release. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

---

[2]The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 343209

Enc. Submitted documents

c: Requestor
(w/o enclosures)