



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 20, 2009

Ms. Leticia Garza
Interim City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522

OR2009-14828

Dear Ms. Garza:

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# 358815 (Baytown PIR# 1326).

The City of Baytown (the "city") received a request for the resignation letter of a named former city employee. As responsive to the request, you submitted a Severance Agreement which you claim is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted agreement. You also state, and provide documentation showing, that you notified the named former employee of the request and of her opportunity to submit comments to this office as to why the information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have also received and considered comments submitted by the requestor. *See id.*

Initially, we must address the city's procedural obligations under the Act. Section 552.301(e) of the Government Code provides that a governmental body must submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, an explanation of how the responsive information falls within the scope of the claimed provisions. *See id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Although you raise sections 552.101, 552.102, and 552.103, you have not submitted any comments explaining how those exceptions apply

to the submitted severance agreement. Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You assert the submitted agreement is excepted under section 552.103. This section, however, is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, sections 552.101 and 552.102 of the Government Code can provide compelling reasons to overcome the presumption of openness. Although you have not provided any arguments explaining how they apply to the severance agreement in this instance, we will consider the applicability of these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, while section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). Accordingly, we will consider your privacy claims under sections 552.101 and 552.102(a) together.

Common-law privacy 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. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Having reviewing the submitted agreement, we conclude it pertains solely to the resignation of a public employee. This office has stated in numerous opinions that the public has a legitimate interest in knowing the reasons for the dismissal of public employees and the circumstances surrounding their resignation. Open Records Decision No. 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal or resignation of public employees); *see* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, because the submitted agreement is of legitimate public interest, it may not be withheld under section 552.101 in conjunction with common-law privacy or section 552.102. We therefore conclude the submitted severance agreement must be released in its entirety.

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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 358815

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
