



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Ms. Deborah Pullum
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2010-01386

Dear Ms. Pullum:

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# 368670 (Legal Desk #NCT-787965).

The City of Tyler (the "city") received a request for of information relating to the city's employment of a parks and recreation director, including (1) applications, resumes, and accompanying submissions deemed to meet the city's minimum qualifications; (2) the names of applicants who were interviewed and the dates and times of the interviews; and (3) documentation of negotiations or promises of salary amounts. You state that most of the requested information either has been or will be released. You claim that other 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 information you submitted.¹ We also have considered the correspondence that we received from the requestor and other interested persons.² See Gov't Code § 552.304 (any person may

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²We note that one of the interested persons raises section 552.026 of the Government Code, which incorporates the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, into the Act. FERPA governs the disclosure of education records maintained by educational institutions or agencies that receive federal funds and is applicable only to education records than an educational

submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address the correspondence that we received from the requestor, in which she narrows her request for information. The requestor states that she wishes to withdraw paragraph 1 of her request and now only seeks access to information encompassed by paragraphs 2 and 3 of her request, relating to those applicants who were interviewed. Thus, we understand the requestor to be seeking access to the interviewees' names; their applications, resumes, and accompanying submissions; the dates and times of their interviews; and any documentation of negotiations or promises of salaries. Therefore, only those types of information that relate to interviewees are responsive to this request, and this decision is applicable only to the responsive information. This decision does not address the public availability of any information that is not responsive to this request, and the city need not release such information in response to this request.

Next, we address another interested person's statement that he applied for employment with the understanding that his application and interviews would be kept confidential. We note that information is not confidential under the Act simply because the party that submitted the information anticipated or requested confidentiality. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Thus, unless it comes within the scope of an exception to disclosure, the submitted information must be released, notwithstanding any expectation or agreement to the contrary.

Turning to the city's arguments, 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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 685. Common-law privacy encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain

institution either maintains or has directly transferred to a third party. Thus, because the city is not an educational institution and does not indicate that any of the submitted information was received from an educational institution, FERPA is not applicable in this instance.

state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

Although the city seeks to withhold certain salary information on privacy grounds, we find that the information in question is not intimate or embarrassing and a matter of no legitimate public interest. *See* Open Records Decision Nos. 455 at 8-9 (1987) (job applicants' salaries are not private), 342 at 3 (1982) (salary and certain other information relating to a public employee has long been held disclosable). We therefore conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

The city informs us, and has provided documentation demonstrating, that a former city employee timely requested confidentiality for some of the submitted information under section 552.024. Based on the city's representations and documentation, we conclude that the city must withhold the former employee's home address, home telephone number, and social security number, which we have marked, under section 552.117(a)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). The city must withhold the Texas driver's license information we have marked under section 552.130.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a

governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). We note that this exception is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The city must withhold the personal e-mail addresses we have marked under section 552.137, unless the owner of an e-mail address has affirmatively consented to its disclosure.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ *Id.* § 552.147(a). The social security number contained in the remaining information may be withheld under section 552.147.

In summary: (1) the marked home address, home telephone number, and social security number of the employee who timely requested confidentiality under section 552.024 of the Government Code must be withheld under section 552.117(a)(1) of the Government Code; (2) the marked Texas driver’s license information must be withheld under section 552.130 of the Government Code; (3) the marked personal e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure; and (4) the social security number in the remaining information may be withheld under section 552.147 of the Government Code.⁴ The rest of the submitted information must be released.

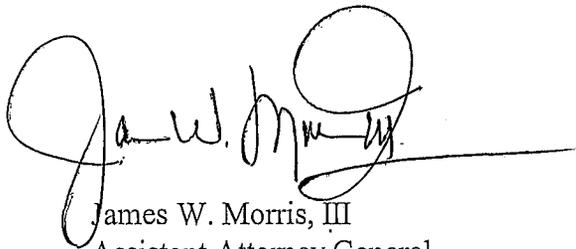
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

³We note that section 552.147(b) 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.

⁴We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 and an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 368670

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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