



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2010

Ms. Leticia Garza  
City Clerk  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424

OR2010-01791

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# 369724 (PIR #1509).

The City of Baytown (the "city") received a request for the names of all former city employees who signed severance agreements similar to a specified document during a particular time period. You claim that the requested information 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 information. You also state, and provide documentation showing, that you notified the former employees whose information is at issue of the request and of their 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 note the submitted information in part consists of information other than the names of former city employees who signed severance agreements, as specified in the request. Thus, only the employee names are responsive, and the remaining information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we address your argument that the submitted information is confidential based on the terms of the severance agreements. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *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 through an 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 does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We next note that the responsive information is subject to section 552.022(a)(3) of the Government Code, which provides:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov’t Code § 552.022(a)(3). The responsive information consists of information in signed severance agreements, which are contracts relating to the expenditure of public funds by the city. This information must be released under section 552.022(a)(3), unless the information is expressly confidential under other law.

Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n 5 (2000) (discretionary exceptions generally). As such, section 552.103 is not “other law” that makes information confidential for purposes of section 552.022. Therefore, the city may not withhold the submitted names under section 552.103. However, because information subject to section 552.022 may be withheld under sections 552.101 and 552.102 of the Government Code, we will consider the applicability of these exceptions to the information at issue.

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 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Indus. Found.*, 540 S.W.2d at 683-85. Accordingly, we will consider your privacy claims under sections 552.101 and 552.102(a) together.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if the information (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) 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. The type of information considered highly intimate or 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. This office has determined that other types of information also are private. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

Upon review, we find that you have failed to demonstrate that the requested information is highly intimate or embarrassing. *See* Open Records Decision Nos. 554 at 2-3 (1990) (names of private entity’s employees not protected from disclosure by privacy), 532 (1989), 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy), 169 (1977) (disclosure of person’s name, home address, and telephone number not invasion of privacy); *see also* Gov’t Code § 552.022(a)(2) (name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body are public information); Open Records Decision No. 423 at 2 (1984) (employee privacy under section 552.102 is confined to information that reveals “intimate details of a highly personal nature”). Therefore, as you have not satisfied the first element of the *Industrial Foundation* test for common-law privacy, we find that the submitted information is not protected by common-law privacy. Thus, the requested names may not be withheld under section 552.101 in conjunction with common-law privacy or under section 552.102. As you have claimed no other exceptions to disclosure for this information, it 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 369724

Enc. Submitted documents

c: Requestor  
(w/o enclosures)