



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2010

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

OR2010-01958

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# 369917 (Baytown PIR# 1513).

The City of Baytown (the "city") received a request for severance agreements, resignation letters, and exit interviews for three named former city employees. You state the city does not possess any responsive information regarding one of the former employees and does not possess exit interviews for the remaining two former employees.¹ You claim that the submitted 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 severance agreements. You also state, and provide documentation showing, that you notified the two former employees 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 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

¹We note that the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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 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 severance agreements 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(a) is the same as the common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation*. 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. 540 S.W.2d 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 agreements, we conclude they pertain solely to the resignations of public employees. 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 information is of legitimate public interest, it may not be withheld under section 552.101 in conjunction with common-law privacy or section 552.102. As you raise no other exception to disclosure, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 369917

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Ms. Rhonda Daugherty
423 Woodvine Drive
El Lago, Texas 77586-6023
(w/o enclosures)

Ms. Kathi Redricks
2977 Rising Tide
League City, Texas 77573
(w/o enclosures)