



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

Mr. John D. Lestock
Assistant City Attorney
The City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2010-16074

Dear Mr. Lestock:

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# 397765.

The City of Paris (the "city") received a request for information from August 1, 2009, to July 30, 2010, pertaining to compensation, reimbursement, and other payments to specified city employees and officials. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor excluded information pertaining to credit cards, medical insurance, life insurance, deferred compensation, 457 Plans, Health Savings Account Plans, and child support payments. We also note some of the information was created before August 1, 2009. Thus, any such 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.

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. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. Personal 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. 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). Upon review, we find that the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information relates to the city's reimbursement of city employees for certain expenditures, which is a matter of legitimate public interest. Thus, the remaining information is not confidential under common-law privacy, and the city may not withhold this information under section 552.101 of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024.¹ Gov't Code § 552.117(a)(1). 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 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 employee who did not timely request under section 552.024 the information be kept confidential. To the extent the information at issue consists of the home addresses of current or former city employees who timely requested confidentiality under section 552.024, the city must withhold such information under section 552.117(a)(1).

We note that the remaining information contains an access device number. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). The city must withhold the access device number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code states 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The city must withhold the marked e-mail addresses under section 552.137, unless the owners affirmatively consent to disclosure.

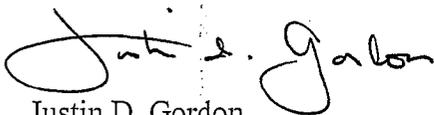
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. To the extent the information we marked consists of the home addresses of current or former city employees who timely requested confidentiality under section 552.024, the city must withhold such information under section 552.117(a)(1). The city must withhold the information we marked under section 552.136 of the Government Code. The city must withhold the marked e-mail addresses under section 552.137, unless the owners affirmatively consent to disclosure. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/em

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Enc. Submitted documents

c: Requestor
(w/o enclosures)