



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2010

Ms. Shannon Eichblatt
City Secretary
City of Mart
P.O. Box 360
Mart, Texas 76664

OR2010-19381

Dear Ms. Eichblatt:

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# 404141.

The City of Mart (the "city") received a request for all background checks conducted on current or prospective employees of the city. You state that some responsive information has been released to the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.102 and 552.117 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body is not acting as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control

¹ We understand you to claim section 552.117 of the Government Code for the employees' personal information. *See* Gov't Code §§ 552.024 (requiring that governmental body employees elect whether to allow public access to their personal information), 552.117 (addressing confidentiality of personal information of governmental body employees).

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the official's right of access to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district). In this instance, the requestor is both a current city council member and the elected pro-tem mayor of the city. He represents to this office that he is acting in his official capacity in requesting background checks of city employees "for evaluation of current and new employees." Based on the requestor's representations and our review, we conclude that he is seeking the information in his official capacity. He therefore has an inherent right of access to the information, and it must be provided to him. The release of this information in this specific instance does not constitute a release to the general public; thus, the city does not waive any potential exceptions to the disclosure of this information. *See* Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public as contemplated under section 552.007 of the Government Code). We note that because the release of this information to a city council member and elected pro-tem mayor is not a release to the public, the requestor must be cautious in maintaining the documents in the same manner as they are maintained by the city.³ *See generally* Gov't Code § 552.352 (criminal penalties imposed for release of confidential information).

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

³ Because our ruling is dispositive, we do not address your arguments against disclosure.

Ref: ID# 404141

Enc. Submitted documents

c: Requestor
(w/o enclosures)