



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2012

Mr. John S. Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR2012-08860

Dear Mr. Schneider:

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# 456084 (City ID SL1221).

The City of Pasadena (the "city") received a request for all currently pending Equal Employment Opportunity Commission ("EEOC") complaints filed by city employees. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.117 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must to submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the

¹While you also raised sections 552.108, 552.1175, 552.130, 552.136, and 552.137 of the Government Code in your initial letter dated April 3, 2012, you have not presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the city received the request for information on March 23, 2012. However, we note the submitted request reflects it was e-mailed to the city secretary on March 20, 2012. Requests for information submitted by e-mail must be sent to the city's officer for public information or that person's designee. *See id.* § 552.301(c) (stating that a written request includes a request in writing that is sent to the officer for public information, or the person designated by that officer, by e-mail or facsimile). The city's website provides that requests for public information should be directed to the city secretary's office.³ The instant request was submitted to the city secretary by e-mail; therefore, we find the city received the request on March 20, 2012. You inform us April 6, 2012 was a city holiday. Accordingly, the fifteen-business-day deadline was April 11, 2012. You submitted the required information in an envelope postmarked April 12, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code, this is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 473 (1987) (section 552.103 may be waived). As such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. Thus, no portion of the requested information may be withheld under section 552.103 of the Government Code. You also raise sections 552.101, 552.102, and 552.117 of the Government Code, which do provide compelling reasons to withhold information. Accordingly, we will address their applicability to the information at issue.

You raise section 552.101 of the Government Code in conjunction with section 1611.10 of title 9 of the Code of Federal Regulations for the submitted information. Section 552.101

³Open Records Request Form, http://www.ci.pasadena.tx.us/users/0033/docs/Open_Rec.pdf (last visited June 1, 2012).

excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision Nos. 599 (1992), 373 (1983). Section 1611.10 of title 9 of the Code of Federal Regulations provides:

The [EEOC] shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).

29 C.F.R. § 1611.10. Section 1611.10 applies to records maintained by the EEOC. You have failed to demonstrate that this section applies to the city as a party to the complaints at issue. Therefore, the submitted information may not be withheld under section 552.101 in conjunction with section 1611.10 of title 29 of the Code of Federal Regulations.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find none of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any portion of it under section 552.101 on the basis of common-law privacy.

Section 552.102(a) of the Government Code excepts from 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). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a). The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information

is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may withhold information under section 552.117(a)(1) only on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. Thus, if an individual whose personal information is at issue timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). Conversely, if an individual did not make a timely election under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

In summary, the city must withhold the information we have marked under section 552.102(a) of the Government Code. If an individual whose personal information is at issue timely requested confidentiality under section 552.024, the city must withhold that individual's information we have marked under section 552.117(a)(1) of the Government Code. The remaining 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 456084

Enc. Submitted documents

c: Requestor
(w/o enclosures)