



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2012

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2012-10898

Dear Ms. Evans:

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# 459468 (GC# 19610).

The City of Houston (the "city") received a request for e-mails between a named city council member and four named city employees. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you note some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-07872 (2012). We have no indication that the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, we conclude the city must continue to rely on this ruling as a previous determination and withhold or release the previously ruled upon information in accordance with Open Records Letter No. 2012-07872. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 of the Government Code encompasses the doctrine of

common-law privacy, which protects information that (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 elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d 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). This office has determined information involving public officials and employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. See Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we determine none of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

We note portions of the submitted information may be subject to section 552.117(a)(1) of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. See 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. Therefore, if the individuals whose information we have marked timely requested confidentiality under section 552.024, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. If the individuals whose information is at issue did not make a timely election under section 552.024, the city may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

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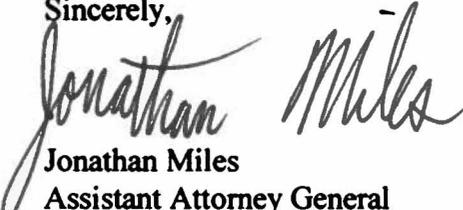
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470.

In summary, the city must continue to rely on Open Records Letter No. 2012-07872 as a previous determination and withhold or release the information we previously ruled upon in accordance with that prior ruling. If the individuals whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information 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](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,



Jonathan Miles

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 459468

Enc. Submitted documents

c: Requestor  
(w/o enclosures)