ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Mr. Richard L. Husen
City Attorney
City of Levelland
P.O. Box 1010
Levelland, Texas 79336

OR2012-14113

Dear Mr. Husen:

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# 464779.

The City of Levelland (the "city") received a request for information pertaining to the termination of two city employees and the disciplinary actions against two city employees. You claim the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from one of the employees whose information is at issue. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note 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. *Id.* Thus, exceptions to public disclosure under the Act do not control 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 the Mayor Pro-Tem of the city. It is unclear from our review whether the requestor is requesting the information in his personal capacity as a member of

the public or in his official capacity as the city Mayor Pro-Tem. Accordingly, we rule conditionally on this matter. Therefore, in the event the requestor is acting in his official capacity, we find the present request is not a request by a member of the public under the Act, and we determine that the city may not withhold the requested information from the requestor pursuant to the Act's exceptions to required public disclosure. *See id.*; *see also id.* JC-120 at 5 (1999) (governmental body may adopt procedure for review of certified agenda or tape recording of closed meeting, but may not absolutely prohibit review by member, even if member did not attend meeting). In the event, however, the requestor is making the present request in his personal capacity as a member of the public, we will address your arguments.

You ask whether section 552.008 of the Government Code applies to the requested information. Section 552.008 grants access to information held by a governmental body, including confidential information, to individual members, agencies, or committees of the Texas Legislature (the "legislature") to be used for legislative purposes. *See* Gov't Code § 552.008(a) (Act does not grant authority to withhold information from individual members, agencies, or committees of legislature to use for legislative purposes). We note the requestor is not an individual to which section 552.008 grants access. Thus, we find section 552.008 is not applicable to the instant request.

You raise section 552.101 of the Government Code in conjunction with sections XIII and XIV of the Levelland City Charter and paragraph (c)(6) of chapter III of the city's policies. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section XIII of the Levelland City Charter establishes the duties of the city mayor and section XIV of the Levelland City Charter establishes duties of the city council. Paragraph (c)(6) of chapter III of the city's policies states "[t]he [c]ity has established reasonable safeguards to prevent unwarranted and improper disclosure of personnel records." We note a governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101 of the Government Code, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) (city ordinance may not conflict with Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act). You do not direct us to, nor are we aware of, any specific provision of state or federal law that allows the city to promulgate a rule designating the information at issue confidential under the Act. Consequently, we conclude the city may not withhold the submitted information under section 552.101 on the basis of the Levelland City Charter or the city's policies.

We understand you to raise section 552.101 in conjunction with the doctrine of common-law privacy. Common-law privacy 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.*, 540 S.W.2d at 685. The type of information considered intimate or embarrassing by the Texas Supreme Court

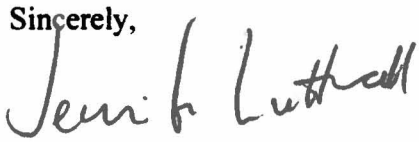
in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find you have failed to demonstrate how any 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.

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 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, 348 (Tex. 2010). Upon review, we find none of the submitted information is excepted under section 552.102(a) of the Government Code, and the city may not withhold any of it on that basis. As no further exceptions to disclosure have been raised, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 464779

Enc. Submitted documents

c: Requestor
(w/o enclosures)