



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 7, 2012

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

OR2012-14194

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# 463525 (ORR# GC 19025-B).

The City of Houston (the "city") received a request for information pertaining to meetings and lobbyists' filings regarding a specified proposed ordinance. You state the city is releasing some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.109, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information may be non-responsive to the instant request for information because they may have been created after September 27, 2011, the date the city received the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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<sup>1</sup>Although you do not raise section 552.137 in your brief, we understand you to claim this section based on your markings in the submitted information. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Next, you acknowledge this request for information was ruled upon in Open Records Letter No. 2011-18561 (2011). In that ruling, we determined the city (1) may generally withhold some information under section 552.107 of the Government Code, but may not withhold the marked non-privileged e-mails under section 552.107(1) to the extent they exist separate and apart from the otherwise privileged e-mail strings; (2) must withhold e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release or the e-mail addresses belong to agents of companies with contractual relationships with the city; and (3) must release the remaining information. You now submit additional information for our review and assert sections 552.101, 552.102, 552.109, and 552.137 of the Government Code for portions of the information. You acknowledge the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office with respect to the newly submitted information. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.102, 552.109, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these sections to the submitted information. However, you must continue to follow Open Records Letter No. 2011-18561 with respect to the remaining requested information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. 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. This office has found some kinds of medical information or information

indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* ORD 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). We note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining responsive information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining responsive information may not be withheld 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 (Tex. 2010). Having carefully reviewed the information at issue, we have marked information that may be subject to section 552.102(a) of the Government Code. However, we are unable to determine the identities of the individuals at issue. Therefore, to the extent the marked dates of birth pertain to city employees or officials, they must be withheld under section 552.102(a) of the Government Code. Conversely, to the extent the marked dates of birth pertain to individuals who are not city employees or officials, they may not be withheld under section 552.102(a). Further, we find no portion of the remaining responsive information is subject to section 552.102(a) of the Government Code, and the city may not withhold any of the remaining responsive information on that basis.

You claim some of the remaining responsive information is subject to section 552.109 of the Government Code. Section 552.109 excepts from public disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]" Gov't Code § 552.109. This

office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. *Indus. Found.*, 540 S.W.2d at 685. As noted above, common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Id.* As further noted above, we find no portion of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest. Thus, no portion of the remaining responsive information may be withheld on the basis of section 552.109.

Some of the remaining responsive information may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent any of the remaining information you have marked consists of the home address or telephone number, emergency contact information, social security number, or family member information of a current or former city employee or official who timely requested confidentiality under section 552.024 of the Government Code, the city must withhold such information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

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<sup>2</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. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

In summary, except for the newly submitted information, the city must continue to follow our ruling in Open Records Letter No. 2011-18561. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the marked dates of birth pertain to city employees or officials, they must be withheld under section 552.102(a) of the Government Code. To the extent any of the remaining information you marked consists of the home address or telephone number, emergency contact information, social security number, or family member information of a current or former city employee or official who timely requested confidentiality under section 552.024 of the Government Code, the city must withhold such information under section 552.117(a)(1) of the Government Code. The city must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining responsive 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 463525

Enc. Submitted documents

c: Requestor  
(w/o enclosures)