



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2013

Ms. Cynthia Osborn  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-15834

Dear Ms. Osborn:

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# 498826.

The City of El Paso (the "city") received two requests from the same requestor for information pertaining to city inspections of a specified public works project. You state you have released some of the requested information to the requestor. You claim that 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, we note the requestor asks the city to answer questions in her first request. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

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. This section encompasses information protected by other statutes, including federal law. You assert the information at issue was created by the city to assure compliance

with the Davis-Bacon Act, which requires federal construction contractors to pay their workers the "prevailing wage." *See* 40 U.S.C. §§ 3141-3148. You inform us the information at issue pertains to a federally-funded construction project. Section 5.6(a) of title 29 of the Code of Federal Regulations sets forth the enforcement provisions for the Davis-Bacon and Related Acts and provides in part:

(3) . . . Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. . . .

...

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. . . .

29 C.F.R. § 5.6(a)(3), (5). You inform us the city conducted an investigation on the specified public works project to assure compliance with the Davis-Bacon Act. You further state the submitted Labor Standards Review forms were filled out by city inspectors after conducting interviews with employees about their work and assert these forms are confidential under section 5.6(a) of title 29 of the Code of Federal Regulations. Upon review, we find a portion of the submitted information reveals the employees' identities. You do not inform us that the employees concerned have consented to release of their information, and we note the requestor is not a federal official. Therefore, the city must withhold the identifying information of employees, which we have marked, under section 552.101 in conjunction with section 5.6(a)(5) of title 29 of the Code of Federal Regulations, if the employees concerned have not consented to release of their information. However, we find you have failed to demonstrate the remaining information is identifying of any particular employee. Therefore, the city may not withhold any of the remaining information under section 552.101 on this basis. As no further exceptions have been raised, the city must release the remaining 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 498826

Enc. Submitted documents

c: Requestor  
(w/o enclosures)