



August 17, 2001

Ms. Kathleen Finck Watel  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2001-3624

Dear Ms. Watel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150841.

The City of San Antonio (the "city") received a written request for the following information:

a list of city employees that have retired in the last three-year period.  
If possible, I would like to narrow the list to those retirees participating  
in the 457-benefit plan sponsored by the city.

You contend that the requested information is excepted from required public disclosure pursuant to statutes designed to protect the privacy of individuals, specifically section 552.101 of the Government Code and chapter 1703 of the Occupations Code. You also cite Open Records Decision No. 545 (1990) as authority for withholding the requested information. You have submitted a representative sample of the requested information.<sup>1</sup>

Before we address the applicability of the exception you raised, we must first address certain procedural matters. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office

---

<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 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 that those records contain substantially different types of information than that submitted to this office.

within fifteen business days of receipt of an information request “a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested.” Gov’t Code § 552.301(e)(1)(D). Otherwise, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

You did not submit the requested information to this office in a timely manner. The city received the records request on May 31, 2001. You did not submit copies of the requested information until June 25, 2001; consequently, the requested information is presumed to be public unless we are presented with a compelling reason to withhold the requested information. *See* Open Records Decision No. 150 (1977) (demonstration that information is made confidential by statute or comes under the protection of exception to disclosure intended to protect privacy interests constitutes compelling reason for non-disclosure).

We also note that you did not supply this office with an explanation as to why the requested information is protected from public disclosure under section 552.101. The Public Information Act places the burden of explaining the applicability of a raised exception on the governmental body raising that exception. Section 552.301(e)(1)(A) requires the governmental body to submit to this office “written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld.” Otherwise, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302. Because section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” we will consider the applicability of this exception to the information at issue, despite that fact that you did not submit the requested information to us in a timely manner and did not provide written comments as to why section 552.101 applies.<sup>2</sup>

You contend that the documents revealing employees’ participation in a 457 plan are made confidential under statutes designed to protect individuals’ privacy interests, specifically the Polygraph Examiners Act, Occupations Code chapter 1703. You have not explained why the requested information is made confidential under the Polygraph Examiners Act. After reviewing the information at issue, it is clearly apparent that the provisions of chapter 1703 of the Occupations Code are inapplicable to the information at issue.

---

<sup>2</sup>We also note that you have redacted the retirees’ social security numbers from the records at issue. Because section 552.301(e)(1)(D) requires governmental bodies to submit “a copy of the specific information requested,” it is generally impermissible for governmental bodies to submit to this office copies of documents where requested information has been redacted. In this instance, however, the retirees’ social security numbers arguably fall outside the scope of the records request; consequently, we do not address here whether those social security numbers are subject to required public disclosure. On the other hand, we caution you to refrain from the practice of redacting requested information when you submit future requests under section 552.301.

The only other authority you have cited to this office for withholding the information at issue is Open Records Decision No. 545, which concluded that information about personal investment decisions of public employees, such as the voluntary participation in a deferred compensation program, is excepted as personal financial information protected by common law privacy. Section 552.101 of the Government Code also encompasses common law privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public).

We agree that the city must withhold pursuant to common law privacy the list of employees that you submitted, which reflects retirees' personal financial decisions to voluntarily participate in the 457 benefit plan. However, the city must release to the requestor a "list of city employees that have retired in the last three-year period." *See* Gov't Code § 552.022(a)(2) (explicitly making public "dates of employment of each employee and officer of a governmental body").

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

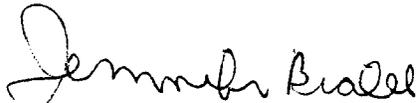
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/RWP/sdk

Ref: ID# 150841

Enc. Submitted documents

c: Mr. John Boecker  
Financial Consultant - Investments  
A.G. Edwards & Sons, Inc.  
70 North East Loop 410, Suite 100  
San Antonio, Texas 78216  
(w/o enclosures)