



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 5, 2002

Mr. Hollis D. Young
Assistant City Attorney
City of San Antonio
City Attorney's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2002-6910

Dear Mr. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173126.

The City of San Antonio (the "city") received a request for any and all reports, letters, e-mails, or other correspondence regarding the San Antonio Water System ("SAWS") Lateral to People Audit. You state that most of the responsive information will be released to the requestor, but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and 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. 540 S.W.2d at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is confidential under common-law privacy, *see* Open Records Decision Nos. 600 (1992), 545 (1990).

You seek to withhold certain financial information in Exhibit IIB under common-law privacy, asserting that release of the information you have marked would enable the requestor to determine the annual income of individuals who participated in the Laterals to People program. In Open Records Decision No. 373 (1983) this office considered whether the statutory predecessor to section 552.101 required the City of Austin to withhold from public disclosure applications to a city-administered program to receive a federally funded loan or grant to rehabilitate applicants' homes. The decision explained that the application files contained information about an applicant's sources of income, employment, salary, mortgage payments, assets, medical and utility bills, social security and veterans' administration benefits, verification of employment and mortgage payments, credit history, age, ethnic origin, and family composition. ORD No. 373 at 1.

The decision concluded that the statutory predecessor to section 552.101, incorporating the common-law doctrine of privacy, generally excepted from required public disclosure financial information relating to an individual applicant for a housing rehabilitation grant. *Id.* at 4. However, the remainder of the requested information, including the applicant's age, ethnic origin, and family composition, was not private under common-law privacy. *Id.*

After reviewing your arguments and the submitted information, we conclude that the city must withhold a portion of the information you have marked, as we agree such information is private financial information that is highly intimate and of no legitimate public interest. *See* Open Records Decision Nos. 626 (1994), 373 (1983). In addition, we find that certain additional information you did not mark is also confidential pursuant to common-law privacy. We have marked the information to be withheld. The remainder of the information you have marked is not protected by common-law privacy and therefore, may not be withheld under section 552.101.

You assert that the information in Attachment IIA is excepted from disclosure under section 552.111. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. *Texas Department of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under

section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

You inform us that the document in Attachment IIA is a preliminary draft of a letter concerning a policy matter from the city to SAWS that was never sent out. After reviewing the information at issue, we conclude that, as you indicate that the draft was intended for release in final form, this draft document is excepted from disclosure under section 552.111.

To summarize, the city must withhold the information we have marked in Exhibit IIB under common-law privacy. The draft document in Attachment IIA may be withheld under section 552.111. The remainder of the submitted information must be released to the requestor.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 173126

Enc. Submitted documents

c: Mr. Jeff Coyle
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1031 Navarro Street
San Antonio, Texas 78205
(w/o enclosures)