



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2004

Mr. Peter Gruning
Duvall & Gruning, P.L.L.C.
112 North LBJ Drive
San Marcos, Texas 78666

OR2004-0273

Dear Mr. Gruning:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194224.

The City of Schulenburg (the "city"), which you represent, received three requests for fourteen categories of information pertaining to the city's budgets, personnel, equipment, and tax returns. The city has released the 2002 budget. The city has not submitted information responsive to categories 2 (2003 budget), 6 (personnel policies and procedures), 7 (maintenance logs of city equipment), 10 (job descriptions), 12 (tax returns), 13 (employee time sheets and paving job invoices), and 14 (ordinance). To the extent such information exists, we assume the city has released the information. Gov't Code §§ 552.301, .302. The city asserts that the submitted information is excepted from public disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, . . . , salary, title, and dates of employment of each employee and officer of a governmental body; [and]

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

Gov't Code § 552.022(a)(2), (3). The submitted documents include telephone bills and invoices relating to the expenditure of public funds by the city. The submitted documents also include the names, salaries, titles, and dates of employment of city employees and officers. This information must be released unless it is confidential under other law. *See* Gov't Code § 552.022(a)(2), (3). Section 552.103 of the Government Code is a discretionary exception that does not make information confidential. Open Records Decision No. 473 (1987). Thus, this information cannot be withheld under section 552.103.

Next, we will consider the city's section 552.103 assertion for the remaining information. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

The city states it filed a lawsuit for declaratory judgment and therefore litigation is pending. However, the city failed to inform this office whether litigation was pending on the date the

city received the request for information as required by section 552.103(c). Thus, we conclude the city failed to demonstrate the applicability of section 552.103. Accordingly, the city may not withhold the remaining information under section 552.103.

However, the submitted information includes confidential information that the city must withhold. First, the information contains motor vehicle identification numbers. Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. You must withhold the marked Texas vehicle identification numbers under section 552.130.

Second, the submitted information contains bank account and other access device numbers that may be used to obtain money, goods, or services. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The city must, therefore, withhold the marked bank account and other access device numbers under section 552.136.

Third, the submitted information includes the home addresses and home telephone numbers of current or former city officials or employees. Section 552.117(a)(1) excepts from disclosure the home addresses and home telephone numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees’ home addresses and home telephone numbers. The city may not withhold this information under section 552.117(a)(1) for those employees who did not make a timely election to keep the information confidential.

The requested records also contain information that is excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from disclosure the home addresses and home telephone numbers of peace officers as defined by article 2.12 of the Code of Criminal Procedure regardless of whether they complied with section 552.024. Thus, the city must withhold the officers’ home addresses and home telephone numbers under section 552.117(2). We have marked these documents accordingly.

Lastly, some of the submitted information is private. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 also encompasses the doctrines of common law and constitutional 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). We have marked the information that is excepted from disclosure under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the personal financial information under common-law privacy; vehicle identification numbers under section 552.130; access device numbers under section 552.136; employees' home addresses and home telephone numbers under section 552.117(a)(1) if they timely complied with section 552.024; and peace officers' home addresses and home telephone numbers under section 552.117(a)(2). The city must release the remaining information.

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

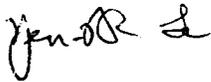
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dep't of Pub. 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 of 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 194224

Enc. Marked documents

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