



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2004

Mr. Robert H. Arthur
General Counsel
Houston Police Officers' Pension System
602 Sawyer, Suite 300
Houston, Texas 77007

OR2004-4486

Dear Mr. Arthur:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202739.

The Houston Police Officers' Pension System (the "system") received a request for four categories of information for a specified period of time pertaining to the system and a former mayor and police chief of the City of Houston. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 29 of article 6243g-4 of Vernon's Texas Civil Statutes.¹ Section 29 provides:

(a) Information contained in a record that is in the custody of a fund established under this article concerning an individual member, retiree, survivor, or beneficiary is confidential for purposes of Sections 552.101, 552.102, and 552.117, Government Code. The information may not be disclosed in a form that identifies a specific individual unless the information is disclosed to:

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

- (1) the individual;
- (2) the individual's attorney, guardian, executor, administrator, or conservator; or
- (3) a person who has written authorization from the individual to receive the information.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member, survivor, beneficiary, or alternate payee of the system.

V.T.C.S. art. 6243g-4, § 29. You state that the system is a governmental pension plan established under article 6243g-4 that is governed by a board of trustees who are responsible for the general administration, management, and operation of the system. You also state that the submitted information pertains to a member of the system who is the subject of this request. Based on your representations and our review of the submitted information, we find that section 29 of article 6243g-4 governs the release of the submitted information. We also find that none of the exceptions to confidentiality in section 29 applies in this instance. Generally, section 29 provides that information that is in the custody of a fund, such as the system, that concerns an individual member may not be disclosed in a form that identifies the specific individual. In this instance, the requestor requests the records of a specific individual. Thus, in this instance, withholding only the identifying information of this member from the submitted information would not preserve the confidentiality that is afforded to the submitted records by section 29 of article 6243g-4. Accordingly, we conclude that the system must withhold the entirety of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 29 of article 6243g-4 of Vernon's Texas Civil Statutes.²

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.

² Because we base our ruling on section 552.101 of the Government Code in conjunction with section 29 of article 6243g-4 of Vernon's Texas Civil Statutes, we need not address your remaining arguments.

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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 202739

Enc. Submitted documents

c: Mr. Doug Miller
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(w/o enclosures)