ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2004

Mr. Marcus W. Norris
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2004-10022

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213718.

The City of Amarillo (the "city") received a request for the resumes of all candidates who applied with the city for the city manager position that was filled September 14, 2004. You claim that the requested information may be excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation. See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4

(1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You assert that releasing the resumes of the persons who failed to make the initial cut and were not considered further and releasing the resumes of the persons who withdrew prior to a final decision may be embarrassing and of no legitimate public interest. We have reviewed the resumes in question and conclude that none of the information contained is excepted from disclosure under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 542 at 5 (1990) (information regarding public employee's qualifications is of legitimate concern to public), 455 at 9 (1987) (public interest in information relating to applicants for public employment justified its disclosure, as information bore on applicants' past employment records and suitability for position in question).

Next, section 552.117 of the Government Code excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024.[1] We note that one of the applicants whose information the city has submitted to this office was already employed by the city when he applied for the city manager position. The city may only withhold this employee's home address, home telephone number, and social security number under section 552.117(a)(1) if he made a request for confidentiality under section 552.024 prior to the date on which the present request for information was made. As you do not indicate and it does not appear that any of the other applicants whose information is at issue is a current or former employee of the city, we conclude that none of the remaining information is excepted under section 552.117 of the Government Code. *See* Open Records Decision No. 674 (2001) (section 552.117 does not apply to applicants for governmental employment or appointment, but to employees or appointees hired by a governmental body).

The social security numbers in the submitted resumes at issue may nevertheless be confidential under federal law. The city must withhold a social security number under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act if it was obtained or is maintained by the city under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers in the resumes at issue are confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have not cited, and we are not aware of, any law enacted on or after October 1, 1990 that requires or authorizes the city to obtain or maintain a social security number. Thus, we have no basis

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[1]The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for concluding that the social security numbers in question were obtained or are maintained under such a law and are therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the city should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

The submitted resumes also contain Texas driver's license information. Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We have marked Texas driver's license information that the city must withhold under section 552.130.

The submitted resumes also contain e-mail addresses. As amended by the 78th Legislature, section 552.137 provides as follows:

> (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
>
> (c) Subsection (a) does not apply to an e-mail address:
>
> > (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
> >
> > (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
> >
> > (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
> >
> > (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

> (d) Subsection (a) does not prevent a governmental body from disclosing an e- mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The city must withhold the e-mail addresses that we have marked under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary: (1) the city may be required to withhold information under section 552.117(a)(1); (2) the social security numbers may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (3) the Texas driver's license information must be withheld under section 552.130; and (4) the marked e-mail addresses must be withheld under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. The rest of the information at issue must be released.

Although you request a previous determination regarding city manager applicant information, we decline to issue one at this time. Accordingly, 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 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,

Tamara L. Harswick

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 213718

Enc. Submitted documents

c: Mr. Joe Chapman
City Hall Reporter
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(w/o enclosures)