



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2005

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2005-03866

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223369.

The City of Longview's Fireman's Relief and Retirement Fund (the "fund") received a request for five categories of information pertaining to the fund, CitiGroup, Smith Barney, and Oppenheimer. You state that some of the requested information will be provided to the requestor. However, you claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes the minutes of a public meeting of a governmental body. The minutes and agendas of a governmental body's public meetings are specifically made public by statute. *See* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice). Information made public by statute may not be withheld from the public under any of the Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the fund must release the minutes of a public meeting in accordance with the Open Meetings Act.

You inform us that the submitted information also consists of "the minutes of the executive sessions of the board of trustees for the fund." Section 552.101 excepts from

disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Gov’t Code § 551.104(c). In addition, minutes of a closed meeting are confidential. *See* Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session are confidential under Open Meetings Act), 495 (1988) (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). Based on your representations, we find that the minutes of closed sessions of the fund’s board of trustees, which you have marked, are confidential under section 551.104(c) and must be withheld from disclosure under section 552.101 of the Government Code.¹

We now address your claims for the remaining submitted information. The Texas Local Firefighters Retirement Act, article 6243e of Vernon’s Texas Civil Statutes (“TLFRA”) provides, in pertinent part:

Sec. 32. (a) Information contained in records that are in the custody of a retirement system established under this Act concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section [552.101 of the Government Code] and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual’s attorney, guardian, executor, administrator, conservator, or other person who the board of trustees of the retirement system determines is acting in the interest of the individual or the individual’s estate;

(C) a spouse or former spouse of the individual if the board of trustees determines that the information is relevant to the spouse’s or former spouse’s interest in member accounts, benefits, or other amounts payable by the retirement system;
or

¹ As our ruling is dispositive on this information, we do not address your other arguments for this information.

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed under an authorization of the board of trustees that specifies the reason for the disclosure.

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

(c) A determination and disclosure under Subsection (a) of this section may be made without notice to the individual member, retiree, annuitant, or beneficiary.

You state that the fund is an entity formed under the authority of TLFRA. We agree that the remaining submitted information is in the custody of the fund and is subject to section 32 of article 6243e. We conclude that only the submitted information that relates to and identifies an individual as a member, retiree, annuitant, or beneficiary in the retirement system is confidential under section 32(a). You do not indicate that any of the release provisions apply in this instance. Thus, you must withhold the identifying information we have marked in the remaining submitted information under section 552.101 of the Government Code in conjunction with section 32 of article 6243e of Vernon's Texas Civil Statutes.

You claim that a portion of the remaining submitted information is protected by common law privacy. Section 552.101 also encompasses the doctrine of common law privacy, which 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). The types 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical disabilities). We have marked the information that you must withhold under section 552.101 in conjunction with common law privacy.

A portion of the remaining submitted information is subject to section 552.136 of the Government Code. This section provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. You must withhold the information we have marked pursuant to section 552.136.

Finally, you claim that the remaining submitted information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses you have marked in the remaining submitted information do not appear to be of a type specifically excluded by section 552.137(c). Thus, the fund must withhold these e-mail addresses under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b).

In summary, the minutes of public meetings must be released in accordance with the Open Meetings Act. However, the fund must withhold the minutes of closed sessions, which you have marked, under section 552.101 in conjunction with section 551.104(c) of the Government Code. The fund must also withhold the information we have marked under section 552.101 in conjunction with section 32 of article 6243e of Vernon's Texas Civil Statutes. The information we have marked must be withheld under section 552.101 in conjunction with common law privacy. The fund must withhold the account numbers we have marked pursuant to section 552.136. Unless the fund has received affirmative

consent to release any of the marked e-mail addresses, you must withhold them pursuant to section 552.137. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 223369

Enc. Submitted documents

c: Mr. David Clouston
Patton Boggs, L.L.P.
2001 Ross Avenue, Suite 3000
Dallas, Texas 75201-8001
(w/o enclosures)