ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2005

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2005-10995

Dear Mr. Toscano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Public Information Act (the "Act"). Your request was assigned ID# 237560.

The City of Dallas (the "city") received a request for the 2003 - 2005 financial disclosure reports for all city council members and the mayor. The city also received a second request for Councilman Leo V. Chaney's 2004 and 2005 financial disclosure reports. The city asserts the reports for councilmen Donald Hill, James Fantroy, and Leo Chaney are excepted from public disclosure under section 552.108 of the Government Code. The city has released the remaining requested information. We have considered the city's argument and reviewed the submitted information. We have also received and considered comments submitted by the Federal Bureau of Investigation (the "FBI"). *See* Gov't Code § 552.304.

We note that Councilmen Donald Hill's and James Fantroy's financial reports were subject to a previous request for information and addressed in Open Records Letter No. 2005-07738A (2005). As the four criteria for a "previous determination" established by this office

in Open Records Decision No. 673 (2001) have been met, the city must comply with Open Records Letter No. 2005-07738A.[1]

Next, the city acknowledged that as to the request for information that the city received on August 30, 2005, it did not seek an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301(b) (governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request). Further, the city failed to submit the requested information within the statutory fifteen-day deadline. *Id.* § 552.301(e)(1)(D). The city's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code is a compelling reason for non-disclosure. Open Records Decision No. 586 (1991). The city explains that the FBI objects to the release of the information.

Chapter 145 of the Local Government Code governs the public availability of the financial disclosure statements filed by local government officers of cities with a population of at least 100,000. Local Gov't Code § 145.001. A municipal officer is required to file a financial statement. *Id.* § 145.003(a). A "municipal officer" is defined as a member of the governing body. *Id.* § 145.002. Thus, the councilman is a municipal officer required to file financial statements under chapter 145. The financial statement required to be filed under chapter 145 is "the form designed by the Texas Ethics Commission under Chapter 572, Government Code." *Id.* § 145.005(a). Financial statements filed under chapter 145 are public records and are "accessible to the public during regular office hours." *Id.* § 145.007(a). As a general rule, the exceptions found in the Act do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the city may not withhold the chapter 145 financial statements under section 552.108; the city must release these financial statements.

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[1]The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

As for the financial disclosure reports created by the city, we note that the Code of Ethics in the Dallas City Code requires city officials and designated city employees to file the requested disclosure reports with the city secretary. Dallas, Tex., Code of Ethics § 12A-19(a). Officials required to submit the reports include city council members. *Id.* § 12A-19(a)(1)(A). The reports include thirteen categories of information, including the name and address of the city official, the names of each family member, the names under which family members do business, names of employers of family members, source of income of family members, property ownership by any family member, debts owed by a family member, and persons or entities who owe a family member debt. *Id.* § 12A-19(b)(2). Family members of the city official include spouses and dependents. *Id.* § 12A-19(b)(1)(A).

Section 12A-19(f)(1)(F) provides the city secretary shall make the reports "available for public inspection and copying at reasonable times." *Id.* § 12A-19(f)(1)(F). Thus, the city code states the requested reports are records available in their entirety to the public. However, the city seeks to withhold the reports under section 552.108. In addition, information that reveals whether an official has family members and a public official's home address is confidential under section 552.117 of the Government Code. We have concluded previously that a home-rule city is authorized to require city officials to file financial disclosure reports, so long as the disclosure ordinance is not inconsistent with the city's charter or state law. Attorney General Opinion H-969 (1977). Any ordinance that conflicts with the Act, therefore, would be of no effect. *See* Attorney General Opinion H-1070 at 5 (1977); Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by the Act), 263 (1981) (city ordinance may not conflict with the Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (agency rule may not make information confidential in circumvention of the Act).

The Act provides that public information in the possession of a governmental body must be made available to the public unless it is excepted from disclosure. Gov't Code §§ 552.007, .021. Two such exceptions are sections 552.108 and 552.117 of the Government Code. Section 552.108 excepts from public disclosure information held by a law enforcement agency that deals with the detection, investigation, or prosecution of crime. *Id.* § 552.108. As we stated, section 552.108 is a discretionary exception that may be waived by a governmental body. Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Section 552.117 excepts from required public disclosure the home addresses and information revealing whether a public official has family members when those officials request that this information be kept confidential under section 552.024 prior to the date on which the request for this information was made. *Id.* § 552.117. Section 552.117 is a mandatory exception that protects information which a governmental body is prohibited from releasing subject to criminal prosecution. *Id.* §§ 552.007, .352; *see* Open Records Decision Nos. 455 (1987), 344 (1982), 325 (1982). Therefore, we must

consider whether the city must release information pursuant to a city ordinance when the information is also excepted under the Act.

Because the city's ordinance may conflict with the requirements of the Act, we must examine whether section 12A-19(f)(1)(F) has been preempted by either section 552.108 or section 552.117 of the Government Code. Open Records Decision Nos. 594 at 2-3 (1991), 263 (1981). We recognize that home-rule cities have broad discretionary powers, provided that no ordinance "shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. art. XI, § 5; *Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993). Home-rule cities possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power. *Id.* An ordinance of a home-rule city that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *Dallas Merchant's & Concessionaire's Ass'n,* 852 S.W.2d at 491; *see City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982), *cert. denied*, 459 U.S. 1087 (1982). However, "the mere fact that the legislature has enacted a law addressing a subject does not mean the complete subject matter is completely preempted." *Dallas Merchant's & Concessionaire's Ass'n,* 852 S.W.2d at 491; *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990). "[A] general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached." *City of Beaumont v. Fall*, 116 Tex. 314, 291 S.W. 202, 206 (1927). Thus, if the Legislature chooses to preempt a subject matter usually encompassed by the broad powers of a home-rule city, it must do so with unmistakable clarity. *Dallas Merchant's & Concessionaire's Ass'n,* 852 S.W.2d at 491; *see City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964).

In this instance, however, we need not determine whether section 552.108 preempts the city's disclosure ordinance because we do not believe that the two provisions conflict. Attorney General Opinion H-1070 at 5 (1977). As we previously stated, section 552.108 is a discretionary exception that the city may waive. By enacting the ethics ordinances, the city has determined that the public has an interest in this type of financial information. Thus, we find that the city has chosen to waive the applicability of section 552.108 to its financial disclosure statements. Moreover, once the city has made nonconfidential information available to the public, it must release the information to any other member of the public and may not subsequently withhold the information under a discretionary exception. Gov't Code § 552.007 (once entity voluntarily makes nonconfidential information available to public, it must be made available to any person). Likewise, the FBI cannot assert section 552.108 for the nonconfidential information because such information has been made public by section 12A-19(f)(1)(F).

Release of information within the reports revealing a city official's home address and whether the official has family members, however, presents a conflict between application

of the city's ordinance and section 552.117 of the Government Code. The Legislature, by enacting section 552.117, meant to protect from required public disclosure the home addresses and information revealing whether a public official has family members when the officials request that this information be kept confidential under section 552.024 of the Government Code. We find that the Legislature has with unmistakable clarity required governmental bodies to withhold a public official's home address and information revealing whether the official has family members when they have requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987) (*citing* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1986)). *But see* Open Records Decision No. 516 (1989) (governmental body may not invoke section 552.117 to withhold information when another governmental body is expressly authorized to obtain it).

Because section 12A-19(f)(1)(F) of the city's Code of Ethics would mandate the release of this information when contained on the required financial disclosure report, the ordinance conflicts with section 552.117. Release under the ordinance would deprive city officials certain protections granted them by the Legislature. We believe the ordinance to be unenforceable to the extent it conflicts with section 552.117. *Dallas Merchant's & Concessionaire's Ass'n,* 852 S.W.2d at 491; Open Records Decision Nos. 594 at 3 (1991), 263 at 2 (1981). Consequently, the city must redact any information on the financial disclosure reports which reveals the councilman's home address and whether he has family members if he has requested that this information be kept confidential under section 552.024 of the Government Code prior to the date on which the request for this information was made. The remaining information in the financial disclosure reports must be released. Notwithstanding the limited ruling here, city officials and employees must continue to comply with all state and local disclosure and conflicts of interest provisions.

In summary, the city must withhold the councilman's home address and information revealing whether he has family members under section 552.117 if he has requested that this information be kept confidential under section 552.024 of the Government Code prior to the date on which the request for this information was made. The remaining information in the financial disclosure reports must be released. Also, the city must release the financial statements required to be filed under section 145.003 of the Local Government Code.

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).

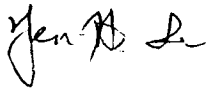
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 Office of the Attorney General 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. 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,



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Ref: ID# 237560

Enc. Marked documents

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