



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2007

Ms. Elizabeth Guerrero Christ
Denton, Navarro, Rocha & Bernal
Attorneys and Counselors
2517 North Main Avenue
San Antonio, Texas 78212

OR2007-02260

Dear Ms. Christ:

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# 272565.

The City of Laredo (the "city"), which you represent, received a request for eight categories of information pertaining to a sexual harassment complaint by a city employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes documents that are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) 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:

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

...

(14) administrative staff manuals and instructions to staff that affect a member of the public[.]

Gov't Code § 552.022(a)(3), (14). The submitted information includes account and invoice information relating to the expenditure of public or other funds by the city. The account and invoice information must be released under section 552.022(a)(3) unless it is expressly confidential under other law. The submitted information also includes portions of various

“Policy and Procedure” manuals for the city. These manuals consist of the city’s e-mail and Internet policies and instructions to staff that affect members of the public for purposes of section 552.022(a)(14). These manuals must be released unless expressly confidential by other law. You assert that all of the information at issue is excepted from disclosure under section 552.103 of the Government Code. However, this exception is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (government body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103); 522 at 4 (1989) (discretionary exceptions in general). Therefore, the city may not withhold any of the information subject to section 552.022 under section 552.103.

However, the information subject to section 552.022 contains account numbers.¹ Section 552.136 of the Government Code provides:

(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. We have marked the account numbers in the information at issue that must be withheld under section 552.136 of the Government Code.

We now address your section 552.103 claim with regard to the information not subject to section 552.022. Section 552.103 provides in part:

(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.

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

...

(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(a), (c). A governmental body 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 on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *See Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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 governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You assert that the majority of the submitted information is related to a sexual harassment suit filed against the city and a city employee. Case number 2006 CVO-001879 D2 was filed on November 30, 2006. The suit was filed before the date of the city's receipt of this request for information. You have provided copies of the petition. Based on your representations and the submitted pleadings, we conclude that the city was a party to pending litigation when it received this request for information. We also conclude that the information at issue is related to the pending litigation. Therefore, section 552.103 is applicable to the information at issue, which we have marked.

The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See Open Records Decision No. 551 at 4-5 (1990)*. If the opposing party has seen or had access to information that is related to litigation, through discovery or otherwise, then there is no interest in withholding such information from public disclosure under section 552.103. *See Open Records Decision Nos. 349 (1982), 320 (1982)*. Therefore, to the extent that the opposing party in the pending litigation has seen or had access to the information at issue, such information is not excepted from disclosure under section 552.103 and must be released. We note that the applicability of section 552.103 ends once the related litigation has been concluded. *See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982)*.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

(Tex. 1976). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* Open Records Decision No. 600 (finding personal financial information to include choice of particular insurance carrier). You assert that the remaining two pages of the submitted documents contain personal financial information. A public employee's salary does not pertain to the employee's private affairs. *See Indus. Found.*, 540 S.W.2d at 685; *see also* Open Records Decision Nos. 423 at 2 (1984) (scope of public employee privacy is narrow), 342 at 3 (1982) (certain information about public employees, including position, experience, tenure, salary, and educational level, has long been held disclosable). Furthermore, as a financial transaction between an individual and a governmental body, the public has a legitimate interest in this type of information. *See generally* Gov't Code § 552.022(a)(2) (stating, among other things, that public employee's salary is expressly public). Accordingly, the information at issue is not protected by common-law privacy and may not be withheld under section 552.101 on this basis.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security number we have marked under section 552.147.²

In summary, the city may withhold the information we have marked pursuant to section 552.103. The city must withhold the account numbers we have marked pursuant to section 552.136, and the social security number we have marked pursuant to section 552.147. The remaining information must be released.

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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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); *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 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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/krl

Ref: ID# 272565

Enc. Submitted documents

c: Ms. Meg Guerra
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(w/o enclosures)