



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2008

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

OR2008-08859

Dear Mr. Toscano:

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# 314747.

The City of Dallas (the "city") received a request for any information that was received by or sent from named individuals regarding the convention center hotel or a named individual. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege, under Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we will not address your claim that the submitted information is confidential under section 552.101 in conjunction with rule 503. Further, the Texas Supreme Court has held that the Texas Rules of Evidence are other laws that make information confidential for the purposes of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The information for which you claim the attorney-client privilege is not encompassed by section 552.022, and thus, we do not address rule 503.

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note and you acknowledge, that the city has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. See Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. See Open Records Decision No. 630 (1994). Although you raise section 552.107 of the Government Code, this is a discretionary exception to public disclosure that protects the governmental body's interest and may be waived. See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, you may not withhold any portion of the submitted information under section 552.107 of the Government Code. We note that portions of the submitted information may be subject to sections 552.117 and 552.137 of the Government Code, which can provide compelling reasons to withhold information.³ Therefore, we will address sections 552.117 and 552.137.

Section 552.117(a)(1) provides that information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. See Gov't Code § 552.117(a)(1). The city is required to withhold this information if the employee timely requested that this information be kept confidential under section 552.024 of the Government Code. See Open Records Decision Nos. 622 (1994), 455 (1987); see generally Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made). Therefore, pursuant to section 552.117(a)(1), the city must withhold the personal information we have marked, if the employee at issue timely elected confidentiality under section 552.024 of the Government Code. If this individual did not make a proper election under section 552.024, then the information we have marked may not be withheld under section 552.117(a)(1).

Section 552.137 provides that "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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

See id. § 552.137(c). Likewise, section 552.137 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. We have marked an e-mail address in the submitted information that the city must withhold under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure or section 552.137(c) applies.

In summary, the city must withhold the information we have marked under section 552.117(a)(1), if the employee at issue timely elected confidentiality. The city also must withhold the e-mail address we have marked under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure or section 552.137(c) applies. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 314747

Enc. Submitted documents

c: Mr. Sam Merten
The Dallas Observer
2501 Oak Lawn Avenue, Suite 700
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(w/o enclosures)