



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2009

Mr. Ryan S. Henry  
Denton, Navarro, Rocha & Bernal, P.C.  
Attorneys for the City of Roma  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-06596

Dear Mr. Henry:

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# 343236.

The City of Roma (the "city"), which you represent, received a request for the name, duty position, office routing symbol or mail stop, hire date, facility name or building, and employment address of all employees of the city hall. You claim that portions of the submitted information are excepted from disclosure under sections 552.102, 552.117, 552.1175, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.<sup>1</sup>

Initially, we note that most of the categories of information on the submitted form, which we have marked, are not responsive to the request for information, because they do not encompass the specific employment information sought in the request for information. The city need not release non-responsive information in response to this request, and this ruling will not address that information.<sup>2</sup>

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<sup>1</sup>We note that you have submitted a blank form with some of the responsive categories of information for our review. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the city in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>As we are able to make this determination with respect to the information that we have marked as not responsive, we need not address your arguments under sections 552.117, 552.1175, and 552.147 of the Government Code.

Next, you state you have informed the requestor that portions of the requested information are available on the city's website. We note that section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). We also note that "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221(b). Thus, the city must provide access to or copies of the responsive information you state is on the city's website to the requestor; however, we note that a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. ORD 682 at 7.

Next, you state that the city "does not have an employee directory, let alone a directory with the specific information requested." We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). However, we further note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds or to which it has access. Open Records Decision No. 561 (1990). You state that the city sought clarification from the requestor and that the city has not received a response. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). However, as you have submitted information for our review and raised an exception to disclosure for this information, we consider the city to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of section 552.102 to the responsive information.

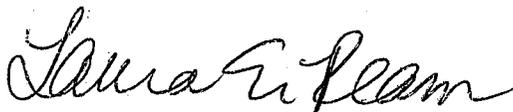
You claim that the responsive information is excepted under section 552.102(a), which excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ refused n.r.e.) (addressing statutory predecessor). Common-law privacy protects information if it (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You argue that the responsive information you have marked is excepted from disclosure under section 552.102(a). Upon review, we find that the employee names and start dates are not intimate or embarrassing and are a matter of legitimate public interest. Thus, the responsive information is not confidential under common-law privacy, and the city may not withhold it under section 552.102(a) of the Government Code. As you raise no further exceptions to the disclosure of the responsive information, it must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/dls

Ref: ID# 343236

Enc. Submitted documents

c: Requestor  
(w/o enclosures)