



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2009

Ms. Yolanda Coroy  
Counsel for the City of South Houston  
2211 Norfolk, Suite 735  
Houston, Texas 77098

Mr. Dick H. Gregg, Jr.  
Gregg & Gregg, P.C.  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2009-11779

Dear Ms. Coroy and Mr. Gregg:

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# 353112.

The City of South Houston (the "city"), which you represent, received a request for a copy of a specified request for information. You claim that the submitted information is not subject to the Act. You further claim that the submitted information is excepted from disclosure under section 552.109 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you contend that "the request is vague" and "does not specifically disclose what documents are sought."<sup>1</sup> Nevertheless, you have submitted information that you believe is responsive to the request. We note that a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Further, we note that the request in this instance specifically describes the document at issue. Thus, we will determine whether the submitted information is excepted from disclosure.

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<sup>1</sup>We note that in the future, if the city receives a request that it considers overly broad or ambiguous, then the city should ask the requestor to clarify or narrow the request. *See* Gov't Code § 552.222(b).

Next, you assert the submitted document is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You contend the submitted communication was made between "two private parties that are not subject to the Act." After reviewing the information at issue, however, we find the submitted communication documents a records request made by a city councilwoman to a city employee, maintained in connection with the transaction of official city business. Therefore, this communication constitutes "public information" as defined by section 552.002(a) and is subject to the Act. Accordingly, we will address the exception you claim with regard to this communication.

Section 552.109 of the Government Code excepts from public disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]" Gov't Code § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy 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. *Id.* at 685. The type 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. Having reviewed your arguments and the information at issue, we find you have failed to demonstrate that release of this information would constitute an invasion of privacy. Therefore, none of the information at issue may be withheld under section 552.109 of the Government Code. As you raise no further exception to disclosure of the submitted information, it must be released.

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

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Ref: ID# 353112

Enc. Submitted documents

c: Requestor  
(w/o enclosures)