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ATTORNEY GENERAL OF TEXAS

May 10, 2016

Ms. Aimee Alcorn-Reed
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-10686

Dear Ms. Alcorn-Reed:

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# 609570 (City File No. 224).

The City of Corpus Christi (the "city") received a request for applications for a specified city council position. You state the city will release some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city's Code of Ordinances requires reporting officials and candidates for city council to file an annual report of financial information with the city secretary. Corpus Christi, Tex., Code of Ordinances §§ 2-340, 2-343. Officials required to submit the statements include members of the city council. *Id.* § 2-341. The statements include eleven categories of information pertaining to the reporting official and the reporting official's spouse, including the name and residence address; names and addresses of all sources of income which exceed ten percent of the reporting official's gross income; the name and addresses of all corporations, partnerships or other business organizations in which the reporting official held, owned, acquired or sold stock or other equity ownership having a value exceeding five thousand dollars; an itemized list of all real property in Nueces County in which the reporting official held any legal or equitable ownership with a fair marked value of two thousand five hundred dollars or more; and any board of directors of governing bodies of which the reporting official is a member. *Id.* § 2-2342

The submitted financial disclosure statements, by city ordinance, are records available to the public. Section 2-344 of the city's Code of Ordinances provides:

All reports of financial information required by the code of ethics shall be sworn, and shall be preserved for five (5) years as public records.

Id. § 2-344. You state that the submitted financial disclosure statements contain personal financial information excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. There is also an issue regarding whether the city may release the statements as required by ordinance even though some of the information reveals confidential information subject to sections 552.117, 552.130, and 552.137 of the Government Code.¹

We note the city, as a home-rule city, is empowered to enact ordinances governing matters of local concern. The city has made a legislative determination that public confidence in its elected city officials and executive level employees is enhanced by the public's knowledge that these city officials are not engaged in conflicts of interest. We have concluded previously that a home-rule city is authorized to require city officials to file financial disclosure statements, 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 Open Records Act), 263 (1981) (city ordinance may not conflict with Open Records Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Open Records 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. A few such exceptions are sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found.*, 540 S.W.2d at 668. Section 552.117 excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.130 protects motor vehicle record information and section 552.137 generally protects an e-mail address of a member of the public. *See id.*

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

§§ 552.130, .137. These provisions are mandatory exceptions that protect 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 consider whether the city may release information pursuant to a city ordinance when the information is protected from disclosure by a mandatory exception under the Act.

Because the city's ordinance may conflict with the requirements of the Act, we must examine whether section 2-344 has been preempted by section 552.101 of the Government Code in conjunction with common-law privacy or sections 552.117, 552.130, and 552.137 of the Government Code. ORDs 594 at 2-3, 263. 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, 103 S.Ct. 570, 74 L.Ed.2d 932 (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 552.101 of the Government Code in conjunction with common-law privacy 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 previously noted, 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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992)

(employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), and 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990), 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question"); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights).

The submitted financial disclosure statements consist of information involving financial transactions between an individual and the governmental body and information relating only to personal investment decisions. Nevertheless, under the facts presented to this office, we conclude that there is legitimate public interest in the financial information at issue. The financial disclosure statements are submitted by reporting officials who make significant city decisions. The statements could provide information about potential conflicts of interest between a decision-maker's personal financial investments and the city's interests. In fact, the city's ethics and financial disclosure ordinances are predicated on the following policy statement:

The purpose of this Code of Ethics is to promote public trust by establishing rules of conduct for city council members, board members, and employees; by providing a fair process for receiving and adjudicating complaints; and by requiring periodic financial disclosure. fore intended to clearly define proper conduct so that those who must comply may understand the rules and carry out their responsibilities consistently with the rules. It is recognized that situations with ethical implications will arise outside the prohibitions of the rules; in such situations, council members, board members, and employees are encouraged to keep in mind the ideal of the public trust and to conduct themselves in a manner to avoid the appearance of impropriety even where not compelled by the rules.

...

[C]ity council members may not use their positions in dealing with the city manager or city employees to advance their personal economic interest, their families' economic interest, or the entities in which they have a substantial interest.

Corpus Cristi, Tex., Code of Ordinances § 2-310. By enacting the ethics ordinances, the city has determined that the public has an interest in this type of financial information. We find that in the case of the city's financial disclosure statements, significant public interest exists in their disclosure. *See* Attorney General Opinion H-15 at 5-7 (1973); Open Records Decision No. 146 (1976); Open Records Letter No. 94-059 (1994); *see also* Attorney General Opinion H-1070. Consequently, we find the financial information is not subject to common-law privacy and section 552.101 is inapplicable. The city's ordinance does not conflict with section 552.101 of the Government Code. Attorney General Opinion H-1070 at 5.

However, we note release of the financial statements would reveal confidential information. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must generally withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, if the individual at issue did not timely request confidentiality under section 552.024, then the city may not withhold any of the information at issue under section 552.117(a)(1).

Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue are not excluded by subsection (c). Therefore, the city must generally withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

We find release of the marked information presents a conflict between the application of the city's ordinance and sections 552.117, 552.130, and 552.137 of the Government Code. We note, the Legislature, by enacting sections 552.117, 552.130, and 552.137 meant to protect from required public disclosure the confidential information discussed above. We find that the Legislature has with unmistakable clarity required governmental bodies to withhold this information. *See* Open Records Decision Nos. 622 (1994), 455 (1987), 263.

Because section 2-344 of the city's Code of Ordinances would mandate the release of this information when contained in the required financial disclosure statement, the ordinance conflicts with sections 552.117, 552.130, and 552.137 of the Government Code. Release under the ordinance would deprive individuals certain protections granted to them by the Legislature. We believe the ordinance to be unenforceable to the extent it conflicts with these sections. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; ORDs 594 at 3, 263 at 2. Consequently, the city must withhold (1) the information we have marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; (2) the information we have marked under section 552.130 of the Government Code; and (3) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 609570

Enc. Submitted documents

c: Requestor
(w/o enclosures)