



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 16, 2016

Mr. Juan E. Gonzalez  
Counsel for City of Weslaco  
Law Office of Juan E. Gonzalez, P.L.L.C.  
3110 East U.S. Highway 83  
Weslaco, Texas 78596

OR2016-11242

Dear Mr. Gonzalez:

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# 610509.

The City of Weslaco (the "city"), which you represent, received a request for call logs, text messages, or e-mails of three named commissioners referencing or with a named individual, as well as Facebook messages with the named individual. You state the city will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.109, 552.1176, 552.136, 552.143, 552.148, and 552.153 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise sections 552.111 and 552.117 of the Government Code, you have not submitted arguments in support of these exceptions; therefore, we assume you have withdrawn them. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>We 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.

You state the city sought clarification of a portion of the request for information and the city has not yet received clarification on this portion of the request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to the request and made arguments against disclosure of this information. Thus, we assume the city has made a good-faith effort to relate this request to information the city holds, and we will address the applicability of your arguments to the information. However, the city has no obligation at this time to release any additional responsive information for which the city has not received clarification. If the requestor responds to the request for clarification, the city must seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

Next, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the city received the request for information on February 26, 2016. Accordingly, the city's fifteen-business-day deadline was March 18, 2016. However, the city submitted a representative sample of the information requested on April 1, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150

at 2 (1977). The city asserts section 552.107 of the Government Code. However, section 552.107 is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the submitted information may be withheld under section 552.107 of the Government Code. However, you also assert the submitted information is subject to sections 552.101, 552.109, 552.1176, 552.136, 552.143, 552.148, and 552.153 of the Government Code. Because the city's claims under these sections can provide compelling reasons for non-disclosure, we will address the city's arguments under these exceptions.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. As this office has explained on many occasions, information involving public officials and employees and public employment is generally not private because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find the submitted information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.109 of the Government Code excepts from 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 common-law privacy standard under section 552.101 of the Government Code, as discussed above. *Indus. Found.* 540 S.W.2d at 685. Upon review, we find the city has failed to demonstrate any of

the submitted information is highly intimate or embarrassing information and of no legitimate public interest. Therefore, the city may not withhold any of this information under section 552.109 of the Government Code.

Section 552.1176 excepts from disclosure

(a) Information that relates to the home address, home telephone number, electronic mail address, social security number, or date of birth of a person licensed to practice law in this state that is maintained under Chapter 81 is confidential and may not be disclosed to the public under this chapter if the person to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the State Bar of Texas of the person's choice, in writing or electronically, on a form provided by the state bar.

Gov't Code § 552.1176. Section 552.1176 only applies to information maintained under Chapter 81 of the Government Code. Chapter 81 pertains to the duties and obligations of the State Bar of Texas. *See generally id.* §§ 81.001–81.123. Accordingly, section 552.1176 only applies to records maintained by the State Bar of Texas. In this instance the information at issue is maintained by the city. Accordingly, section 552.1176 is not applicable to the submitted information, and it may not be withheld on this basis.

Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find you have failed to demonstrate any of the submitted information consists of access device numbers excepted by section 552.136 of the Government Code. Accordingly, the city may not withhold any of the submitted information on this basis.

Section 552.143(a) of the Government Code provides in part the following:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

*Id.* § 552.143(a). Upon review, we find you have failed to demonstrate any of the submitted information was prepared by or received from private investment funds. *See id.* § 552.143(a). Therefore, none of the submitted information may be withheld on this basis.

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from [required disclosure]:
  - (1) the name, age, home address, home telephone number, or social security number of the minor;
  - (2) a photograph of the minor; and
  - (3) the name of the minor’s parent or legal guardian.

*Id.* § 552.148. Section 552.148 specifically applies to information maintained by a municipality “for purposes related to the participation by a minor in a recreational program or activity[.]” *Id.* § 552.148(b). Because the submitted information is not related to participation in a recreational program or activity, section 552.148 of the Government Code does not apply, and the city may not withhold any information on this basis.

Section 552.153 of the Government Code protects proprietary records and trade secrets involved in certain partnerships under chapter 2267 of the Government Code and provides, in part:

- (b) Information in the custody of a responsible government entity that relates to a proposal for a qualifying project authorized under [c]hapter 2267 is excepted from the requirements of [the Act] if:
  - (1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:
    - (A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and
    - (B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under [c]hapter 2267 and contain:

(A) trade secrets of the proposer;

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) work product related to a competitive bid or proposal submitted by the proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible governmental entity or the proposer.

*Id.* § 552.153(b). Upon review, we find you have failed to demonstrate the submitted information relates to a proposal for a qualifying project authorized under chapter 2267 of the Government Code. Accordingly, the city may not withhold any portion of the submitted information under section 552.153 of the Government Code.

We note a portion of the submitted information may be subject to section 552.117(a)(1) of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a); Open Records Decision No. 622 (1994). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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. We have marked the personal information of a city official. If the official whose personal information is at issue timely elected to keep his information confidential pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the official did not timely elect to keep his information confidential pursuant to section 552.024. As no other exceptions to disclosure have been raised, the remaining information must be released.

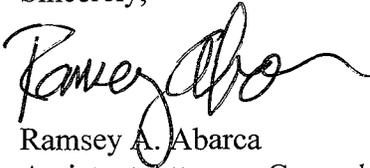
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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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](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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", written in a cursive style.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 610509

Enc. Submitted documents

c: Requestor  
(w/o enclosures)