



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2016

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-26156

Dear Ms. Buendia:

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# 635567.

The City of Dallas (the "city") received a request for information pertaining to the requestor's application for employment with the city. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

The city argues the submitted information is confidential pursuant to an agreement between the city and the requestor entered into during the employment application process. The city

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nevertheless, because section 552.101 of the Government Code protects information made confidential under law, it is a mandatory exception that can provide a compelling reason to overcome the presumption of openness. Thus, we will consider the applicability of section 552.101 to the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume 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.

asserts release of the submitted information would violate the terms of the agreement. We note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See Attorney General Opinion JM-672* (1987); *Open Records Decision Nos. 541 at 3* (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary. As you raise no exceptions to disclosure, the submitted information must be released.³

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

³We note the requestor has a right of access beyond that of the general public to some of the information being released. *See Gov’t Code § 552.023(a)* (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); *Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

Ref: ID# 635567

Enc. Submitted documents

c: Requestor
(w/o enclosures)