



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2016

Mr. David Hamilton
City Attorney
City of Reno
3830 Farm Road 195
Paris, Texas 75462-1621

OR2016-26327

Dear Mr. Hamilton:

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# 636849.

The City of Reno (the "city") received a request for agreements pertaining to any claims involving two named individuals, including claims related to the violation of the constitutional rights of either of the named individuals over the last five years. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information falls under section 552.022(a) of the Government Code, which provides, in part, the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record; and

¹Although you also raise section 552.022(a)(3) of the Government Code, we note this section is not an exception to disclosure. See Gov't Code § 552.022 (information in account, voucher, or contract relating to receipt of expenditure of public funds by governmental body is public unless otherwise confidential).

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(17)-(18). The submitted information consists of court-filed documents that are subject to section 552.022(a)(17) of the Government Code and a settlement agreement to which the city is a party that is subject to section 552.022(a)(18) of the Government Code. The city raises section 552.107(2) of the Government Code for the submitted information. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). You state the information at issue is "considered confidential by a [c]ourt." However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the city may not withhold the submitted information under section 552.107(2).

Furthermore, although the city asserts the submitted information is excepted from release under section 552.103 of the Government Code, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the city may not withhold the submitted information under section 552.103.

Additionally, although the city raises section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Thus, the city may not withhold any portion of the court-filed documents subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, because common-law privacy is other law that can make information confidential for purposes of section 552.022, we will consider your argument under section 552.101 in conjunction with common-law privacy for the settlement agreement, which is subject to section 552.022(a)(18) of the Government Code.

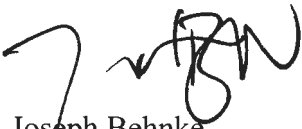
Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or 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. Upon review, we

find you have not demonstrated any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. As the city raises no further exceptions to disclosure, the city must release the submitted 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,

A handwritten signature in black ink, appearing to read 'JB' followed by a stylized flourish.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 636849

Enc. Submitted documents

c: Requestor
(w/o enclosures)