



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2017

Ms. Lora Jean D. Lenzsch
Counsel for City of Sealy
Lenzsch Law Firm
P.O. Box 334
Barker, Texas 77413

OR2017-06194

Dear Ms. Lenzsch:

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# 650631.

The City of Sealy (the "city"), which you represent, received a request for the "comment sheets" associated with specified performance evaluations of the city manager by the city council. You state you released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim some of the submitted information, which you marked, is not responsive to the instant request for information. You state the information at issue consists of unsubstantiated accusations against the city manager. You argue this information is not responsive because it consists of "comments [that] do not pertain to the [c]ity manager[']s evaluation of job performance[.]" We note, however, the comments at issue are contained with the "comment sheets" specifically requested by the requestor. Accordingly, we find the information at issue is responsive to the request for information. Therefore, we will consider your argument under section 552.101 of the Government Code in conjunction with common law privacy and under section 552.131 of the Government Code for the information at issue.

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. However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find the city has failed to demonstrate any portion of the information you marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any portion of the information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.131 of the Government Code relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial

competitive harm to the person from whom the information was obtained.” *Id.* § 552.131(a). We note section 552.131(a) does not protect the interests of a governmental body regarding the release of information pertaining to economic development negotiations. Thus, we do not address your arguments under section 552.131(a) for the information at issue. Further, we have not received arguments from any third party explaining how the responsive information contains the third party’s trade secrets or its commercial or financial information. *See* Gov’t Code § 552.305(d)(2)(B). Because no third party has demonstrated the information at issue qualifies as a trade secret or release of the information at issue would result in substantial competitive harm, we conclude none of the information at issue may be withheld pursuant to section 552.131(a).

Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* § 552.131(b). Section 552.131(b) protects the interests of governmental bodies, not third parties. You state the information at issue contains economic development information pertaining to ongoing negotiations between the city and a third party. However, upon review, we find you have not demonstrated any portion of the information you marked reveals financial or other incentives that are being offered to a business prospect. Thus, we conclude the city may not withhold any of the information at issue under section 552.131(b) of the Government Code. As no further exceptions to disclosure have been raised, 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/sb

Ref: ID# 650631

Enc. Submitted documents

c: Requestor
(w/o enclosures)