



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 27, 2017

Ms. Lisa A. Ketai
Senior Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-26879

Dear Ms. Ketai:

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# 685552 (GC No. 24596).

The City of Houston (the "city") received a request for a specified report and a specified contract. You state you will release the requested contract to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of completed reports made for the city that are subject to section 552.022(a)(1). You must release the completed reports

pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* You seek to withhold the submitted reports under section 552.103. However, 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. You further seek to withhold the submitted information under section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). 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. *See 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 any of the submitted information under section 552.107(2) of the Government Code. However, because section 552.101 of the Government Code makes information confidential under the Act, we will address your argument under this exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses section 17 of article 6243e.2(1) of the Texas Revised Civil Statutes, which provides, in relevant part, the following:

(a) Information contained in records that are in the custody of a fund established under this article concerning an individual member, retiree, or beneficiary is not public information under [the Act]. The information may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual’s attorney, guardian, executor, administrator, or conservator, or other legal representative of the individual’s estate or court-approved small estate or other person who the [fund’s board of trustees (the “board”)] determines is acting in the interest of the individual or the individual’s estate;

(C) a spouse or former spouse of the individual, or the attorney of the spouse or former spouse, if the information

concerns the spouse's or former spouse's in member accounts, benefits, or other amounts payable by the fund; or

(D) a person with written authorization from the individual to receive the information; or

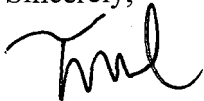
(2) the information is disclosed under an authorization of the board that specifies the reason for the disclosure.

V.T.C.S. art. 6243e.2(1), § 17(a). You claim the submitted information is confidential pursuant to section 17 of article 6243e.2(1). We understand the Houston Firefighters Relief and Retirement Fund (the "fund") is an entity formed under the authority of article 6243e.2(1). You state, and we agree, the submitted information is in the custody of the fund and is subject to section 17(a) of article 6243e.2(1). We conclude that only the information that relates to and identifies an individual as a member, retiree, or beneficiary in the retirement system is confidential under section 17(a). However, upon review, we find no portion of the submitted information consists of identifiable information of a specific individual member, retiree, or beneficiary of a fund subject to this article. Therefore, we find no portion of the submitted information is confidential pursuant to section 17(a) of article 6243e.2(1), and the city may not withhold any portion of the submitted information under section 552.101 on this basis. As you raise 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 685552

Enc. Submitted documents

c: Requestor
(w/o enclosures)