



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2022

Mr. Jay Dale
City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR2022-35834

Dear Mr. Dale:

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# 981020 (Ref. No. SL22F1).

The City of Pasadena (the "city") received a request for certain financial disclosures for all city council members and the mayor during a defined period of time.¹ You claim the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because

¹ You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² We 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.

the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c). Therefore, to the extent the submitted information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the city is not required to release it in response to the request.³

Section 552.117(a)(17) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of an elected public officer, regardless of whether the officer complies with section 552.024 or section 552.1175 of the Government Code. *See id.* § 552.117(a)(17). We note the submitted information relates to elected public officers. Accordingly, the city must withhold the information we marked under section 552.117(a)(17) of the Government Code.⁴

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). 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). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee or official only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. However, upon review, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(1).

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 of the Government Code encompasses section 855.115 of the Government Code. Section 855.115 provides, in relevant part:

(a) In this section, "participant" has the meaning assigned by Section 855.114.

(a-1) Information contained in records that are in the custody of the [Texas Municipal Retirement System (the "retirement system")] or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential and not subject to public disclosure. Except as otherwise provided by this section, the retirement system is not required to

³ In this instance, as our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁴ As our ruling is dispositive, we need not address the argument against disclosure of this information.

accept or comply with a request for a record or information about a record of a participant, or to seek an opinion from the attorney general because the records of a participant are not public records and are exempt from disclosure and the public information provisions of Chapter 552 [of the Government Code]. The information may not be disclosed unless:

(1) the information is disclosed to:

(A) the participant or the participant's attorney, guardian, executor, administrator, conservator, or other person who the director [of the retirement system] determines is acting in the interest of the participant or the participant's estate;

(B) a spouse or former spouse of a participant after the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee after the director determines that disclosure of the information requested is reasonably necessary to:

(i) the performance of the duties of the official or employee; or

(ii) perform the purposes of the retirement system; or

(D) a person authorized by the participant in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the participant will have a reasonable opportunity to contest the subpoena.

Id. § 855.115(a), (a-1); *see also id.* § 855.114 (defining "participant" as a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system). Upon review, we find you have failed to demonstrate the applicability of section 855.115 to the remaining information, and the city may not withhold any portion of it under section 552.101 on that basis.

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" *Id.* § 552.111. This section encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San*

Antonio, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such information will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995). Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2002, no pet.); see ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendations as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You assert the remaining information consists of advice, recommendations, and opinions between and among city officials. However, we find the remaining information consists of general administrative information that does not relate to policymaking or is purely factual in nature. Thus, we find you have failed to demonstrate how the remaining information is excepted under section 552.111. Accordingly, the remaining information may not be withheld under section 552.111 of the Government Code on the basis of deliberative process privilege.

Section 552.101 of the Government Code also 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 found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. See Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). 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. 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). Upon review, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the submitted information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the city is not required to release it in response to the request. To the extent the submitted information is subject to the Act, the city must (1) withhold the information we marked under section 552.117(a)(17) of the Government Code and (2) release the remaining 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/pt

Ref: ID# 981020

Enc. Submitted documents

c: Requestor
(w/o enclosures)