

Legal Q&A

By Bill Longley, TML Legal Counsel

Q: What should a city do if it wishes to withhold information pursuant to a Public Information Act (PIA) request?

A: For requested information that is either confidential by law or that the city wishes to withhold pursuant to an exception to the PIA, the city must request a decision from the Open Records Division at the Office of the Attorney General to determine whether or not the information may be withheld. TEX. GOV'T CODE § 552.301(a). The city must ask for the decision and state the exceptions that apply within ten business days of receiving a written request. *Id.* at § 552.301(b). Within 15 business days, the city must submit additional information to the attorney general regarding the request, including written comments arguing why the information should be withheld under the stated exceptions, a copy of the request itself, and a copy of the requested information. *Id.* at § 552.301(e).

Q: Under what circumstances does a city not have to request a decision from the attorney general?

A: Typically, a city may withhold information without requesting an opinion from the attorney general only if the attorney general has issued a “previous determination.” There are two types of previous determinations. The first type is a previous decision from the attorney general’s office in which the exact same information was requested of the same governmental body. Tex. Att’y Gen. ORD-673 (2001) at 6-7. The other is a previous decision applicable to the same category of information and same type of governmental body that concludes that a clearly delineated category of information is excepted under the PIA and may be withheld without the necessity of again seeking a decision from the attorney general. *Id.* at 7-8. This type of previous determination can apply to all governmental bodies if the decision so provides. *Id.* at 7, n.7.

In addition, the express language of a statute may allow a governmental body to withhold information without requesting a decision. For instance, the text of the PIA provides that social security numbers may be withheld without requesting a decision from the attorney general. *See* TEX. GOV'T CODE § 552.147(b). Recent legislation and a recent previous determination (of the second type, as described above) have expanded the circumstances in which a city may forego requesting a determination in order to withhold information from a requestor. More details on these changes are found below.

Q: What changes were made to the PIA during the 2009 legislative session?

A: The most substantive changes made to the PIA during the Eighty-First Legislature were contained in S.B. 1068, which was passed and has been signed into law. As a result of the changes made by the bill, city officials now may redact certain categories of information without having to first request a letter ruling from the attorney general on the matter.

Under Section 552.024 of the Government Code, city officers and employees are required to be presented with a form to fill out within 14 days of being hired, appointed, or elected. TEX. GOV'T

CODE § 552.024(b). The form indicates whether or not the individual wishes to keep certain personal information confidential in case it is requested under the PIA. Personal information that an employee or officer may elect to withhold under this section includes home address, home phone number, social security number, and information about family members. *Id.* at § 552.024(a).

Prior to the passage of S.B. 1068, if a city had a form on file indicating that an officer or employee had elected to keep this information confidential and received a PIA request for information that included some of this personal information, the city still had to request a letter ruling from the attorney general as to whether or not the information could be withheld. S.B. 1068 amended Section 552.024 to allow a city to redact this personal information, assuming the officer or employee elected to keep it confidential, without going through the process of requesting a decision from the attorney general. *Id.* at § 552.024(c)(2). The bill also allows a city to redact the same information for any peace officer without requesting a decision. *Id.* at § 552.1175(f). If a city redacts an employee or officer's personal information pursuant to either of these sections without requesting a ruling, it must send a form notifying the requestor of the redactions and of their rights to request a ruling. *Id.* at §§ 552.024(c-2); 552.1175(h). The form is available on the attorney general's Web site at http://www.oag.state.tx.us/open/ord_forms.shtml.

Q: Were any exceptions to disclosure added to the PIA during the 2009 legislative session?

A: Yes. S.B. 1068 also created a new exception to disclosure under the PIA. Sec. 552.151 of the Government Code was created to protect information that, if released, would endanger a city employee or officer. In order to withhold information under this section, a city would need to demonstrate to the attorney general how the release of the requested information would likely cause a city officer or employee to face a substantial threat of physical harm.

Q: What changes were made to the PIA process by Open Records Decision (ORD) Number 684?

A: In addition to the information a city may now withhold without seeking a determination from the attorney general pursuant to the passage S.B. 1068, the attorney general recently released an opinion that serves as a previous determination. It applies to all governmental bodies, allowing them to withhold several additional categories of requested information without the necessity of first requesting a decision. *See* Tex. Att'y Gen. ORD-684 (2009). ORD 684 allows cities to more efficiently respond to open records requests by giving them the ability to withhold information if it fits within the categories described in the decision. According to the attorney general, the design of ORD 684 was to encourage "governmental bodies to quickly release clearly public information to requestors while saving the time and expense involved in seeking a decision on specific, clearly delineated categories of information the Legislature has deemed confidential." *Id.* at 2. The ten categories of information covered by the ORD are as follows:

- Direct deposit authorization forms;
- Employment Eligibility Verification Form I-9 and attachments;
- W-2 and W-4 forms;

- Certified agendas and tapes of executive sessions;
- Fingerprints;
- L-2 and L-3 declarations;
- Motor vehicle record information under 552.130;
- Access device information under 552.136;
- E-mail addresses of members of the public under 552.137; and
- Certain military discharge records.

Id. at 3-11.