



January 24, 2001

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
Office of the City Attorney
City Hall
1500 Marilla
Dallas, Texas 75201

OR2001-0274

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143489.

The City of Dallas (the "city") received a request for the city's telephone log book policy regarding retention of copies of telephone messages made to city council members, and the names, addresses, and phone numbers of one current and two former city employees. You state that no information regarding the first request item.¹ You further state that the city has released the requested names and one of the requested phone numbers. However, you claim that the remaining requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of

¹The Public Information Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Nos. 605 at 2 (1992), 572 at 1 (1990), 558 at 1 (1990), 362 at 2 (1983).

receiving the written request.” Gov’t Code § 552.301. Otherwise, the requested information is presumed to be public information. Gov’t Code § 552.302. You state that the city received the request for information on October 4, 2000. Accordingly, the city’s deadline for requesting an attorney general decision in regard to this request for information expired ten business days later on October 18, 2000. *See id.* § 552.301. However, the city did not mail its request for an attorney general decision until November 13, 2000. Therefore, the city missed its ten-day deadline. Consequently, absent a compelling reason to withhold the information, the requested records must be released. We find that the documents at issue affect third parties’ interests, and therefore a compelling reason exists to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.117 of the Government Code excepts from required public disclosure information that reveals a public employee’s home address, telephone number, social security number, or whether the public employee has family members, but only if the public employee has requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Moreover, a governmental body may not withhold the information of a current or former employee who made the request for confidentiality under section 552.024 *after* the request for information was made. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for that information is made. Open Records Decision No. 530 at 5 (1989). At issue here are three home addresses and two home telephone numbers of current and former city employees. You have provided us with the election forms that these employees submitted pursuant to section 552.024. Having reviewed these election forms, we find that the city must withhold addresses and telephone numbers at issue under section 552.117(1).

Finally, you request that this ruling serve as a previous determination for future requests for information of the types listed under section 552.117(1) regarding former or current city employees who submitted timely election forms under section 552.024. We appreciate your request but decline to issue such a previous determination at this time. Therefore, this letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\seg

Ref: ID# 143489

Encl: Submitted documents

cc: Mr. Paul R. Shunatona
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(w/o enclosures)