



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 1, 2003

Ms. Elizabeth Lutton
Senior Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2003-2932

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180858.

The City of Arlington (the "City") received a request for a current listing of retirees' names and addresses. The City states it will release the requested names. You claim that the requested addresses are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. However, since here the request concerns information relating to *retired* persons, if a former City employee is no longer a peace officer as defined by article 2.12, then section 552.117(2) is inapplicable. In this instance, then, the

¹ We assume that 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.

addresses of any former City employees who are no longer peace officers may still be withheld under section 552.117(1).

Section 552.117(1) of the Government Code exempts from disclosure the home address of a former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the City may only withhold information under section 552.117 on behalf of a former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the present request for this information was received. For any former employee who timely elected to keep his or her personal information confidential, the City must withhold the employee's home address. The City may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. We have marked the information in the submitted documents that must be withheld under section 552.117(1) for any employee who timely elected to keep his or her personal information confidential pursuant to section 552.024.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Robert F. Maier
Assistant Attorney General
Open Records Division

RFM/seg

Ref: ID# 180858

Enc. Submitted documents

c: Ms. Elizabeth Scott
2808 Augusta Lane
Arlington, Texas 76012
(w/o enclosures)