



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 20, 2003

Mr. Ernesto A. Garcia  
Assistant City Attorney  
City of Laredo  
P. O. Box 579  
Laredo, Texas 78042-0579

OR2003-3375

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181339.

The City of Laredo (the "city") received a request for the "grant names for each account number listed in your letter dated 2-21-03 (see attached copy). Example: Account # 0012003=Auto Theft Task Force." The requestor also seeks "a list of names of police officers and civilians assigned to these grant positions." You state that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). We note that whether a submission to us is timely is determined by section 552.308, which provides:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person *by first class United States mail* properly addressed with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

(b) When this subchapter requires an agency of this state to submit or otherwise give to the attorney general within a specified period a request, notice, or other writing, the requirement is met in a timely fashion if:

(1) the request, notice, or other writing is sent to the attorney general *by interagency mail*; and

(2) the agency provides evidence sufficient to establish that the request, notice, or other writing was deposited in the interagency mail within that period.

Gov't Code § 552.308 (emphasis added).

You indicate that the city received the written request for information on February 28, 2003. Therefore, the city was required to request a decision from us with regard to the information at issue no later than March 14, 2003. We note that we received the city's request for decision on March 17, 2003. Because the request for decision was not received by us or deposited in first class United States mail or interagency mail within the ten business day period of time, the city did not meet the elements of timeliness established by section 552.308. Accordingly, the city failed to comply with section 552.301 of the Government Code in requesting this decision from us. *See* Gov't Code § 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information at issue is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). In this instance, you assert that the information at issue is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception and, under the present circumstances, does not provide a compelling reason to overcome the presumption that the information at issue is now public. *See* Open Records Decision No. 177 (1977) (governmental body may waive

statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties); *cf.* Open Records Decision 586 (1991) (deciding that need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Thus, the city may not withhold any portion of the information at issue under section 552.108 of the Government Code. However, since the city also claims that the information at issue, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code, we will address these particular claims.

You claim that some of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy.<sup>1</sup> Information is protected from disclosure under the common-law right of privacy if it 1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, information may also be withheld under section 552.101 in conjunction with the common-law right of privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

You state that the release of the names of officers and civilians and their assigned posts that correspond to grant accounts representing grant monies for specific crime prevention categories of a sensitive nature would risk the safety of undercover officers assigned to those grants and could present a direct threat of physical danger to the individual officers. Based on our review of your arguments and the submitted information, we conclude in this instance that the city must withhold all names of officers, department designations for these officers, and division designations for these officers that are contained within the submitted information pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy.

You also claim that some social security numbers that are contained within the remaining submitted information are excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure under the common-law right to privacy.

the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(2). Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we conclude that the city must withhold all social security numbers of peace officers contained within the remaining submitted information pursuant to section 552.117(2) of the Government Code. *See* Open Records Decision No. 670 at 5-6 (2001) (governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies").

In addition, you claim that other social security numbers that are contained within the remaining submitted information are excepted from disclosure pursuant to section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 for the information was not made until after the request for the information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the city must withhold the social security numbers of current or former employees of the city that are contained within the remaining submitted information pursuant to section 552.117(1) of the Government Code, if the employee with whom a particular social security number is associated timely elected confidentiality for this number in accordance with section 552.024 of the Government Code prior to the time that the city received the present request for information.

Nevertheless, the social security numbers of current or former city employees that are contained within the remaining submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. Section 552.101 also encompasses information that is protected from disclosure by other statutes. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that any of these social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the city, however, that section 552.352 of

the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any of these social security numbers, the city should ensure that they were not obtained and are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the city must withhold all names of officers, department designations for these officers, and division designations for these officers that are contained within the submitted information pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. The city must withhold all social security numbers of peace officers contained within the remaining submitted information pursuant to section 552.117(2) of the Government Code. The city must withhold the social security numbers of current or former employees of the city that are contained within the remaining submitted information pursuant to section 552.117(1) of the Government Code, if the employee with whom a particular social security number is associated timely elected confidentiality for this number in accordance with section 552.024 of the Government Code prior to the time that the city received the present request for information. Nevertheless, the social security numbers of current or former city employees that are contained within the remaining submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. The city must release the remaining submitted information to the requestor.

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

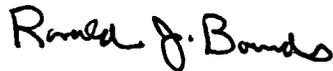
that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 181339

Enc. Submitted documents

c: Mr. J. L. Martinez  
c/o Ernesto A. Garcia  
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(w/o enclosures)