



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 17, 2003

Ms. Florence R. Upton
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2003-4159

Dear Ms. Upton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182940.

The City of San Antonio (the "city") received a request for the names and addresses of individuals who have applied to take the firefighter examination, as well as the name of the examiner who will be conducting the examination. You state that the city will release the name of the examiner to the requestor. You claim that the addresses of the applicants 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

You argue that if the requested addresses belong to current or former city employees, the addresses may be excepted under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However,

¹We 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.

information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for 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). Additionally, we note that section 552.117 does not protect the personal information of applicants unless those applicants are current or former city employees who timely requested that their information be kept confidential under section 552.024. Therefore, if a section 552.024 request for confidentiality was made prior to the city's receipt of the instant request for information, you must withhold these employees' home addresses pursuant to section 552.117. However, if the request for confidentiality was not made prior to the city's receipt of the instant request for information, section 552.117 is inapplicable to these employees and the requested home addresses must be released. Finally, if the applicants at issue are not current or former city employees, the addresses may not be withheld under section 552.117 and must be released 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 182940

Enc. Submitted documents

c: Don McNea Fire School, Inc.
13917 Trenton Oval
Cleveland, Ohio 44136
(w/o enclosures)