



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2004

Ms. Myrna S. Reingold
Galveston County
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2004-0616

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 195202.

The Galveston County Human Resources Department (the "department") received a request for the names and addresses of current and former employees of Galveston County (the "county") who participated in a certain employee benefit plan from 1995 to 1999. Although the department does not maintain such a list, you indicate that a report containing the requested information can be created. You state that you have given the requestor a written estimate of the cost associated with providing this information and that the report will be generated upon receipt of a written acceptance or payment from the requestor. However, you claim that some of the information to be included in this report is exempt from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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.

official or employee did not timely elect to keep this information confidential, the department may not withhold the home address under section 552.117. However, if the employee is a peace officer employed by the county at the time of the request, or if the officer was no longer employed by the county at the time of the request and is still a licensed peace officer, the home address must be withheld pursuant to section 552.117(a)(2). If the employee was a peace officer formerly employed by the county but is no longer a licensed peace officer, and the former officer made an election to keep this information confidential prior to the receipt of the current records request, the officer's home address must be withheld under section 552.117(a)(1); if, however, the former officer did not timely elect to keep this information confidential, the officer's home address may not be withheld. *See* Gov't Code § 552.117(a)(1).³

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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).

³Because this determination is dispositive of all information at issue in the present request, we do not reach your argument under section 552.1175 of the Government Code.

Initially, we note that the act does not require the governmental body to prepare new information in response to a request. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex.App.— Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). You have, however, submitted to this office a representative sample of the information to be included in the requested report. To the extent to which the submitted sample includes all current county employees and not just those employees that participated in the benefit plan at issue, much of the information found in the submitted exhibits surpasses the scope of the present request. You further indicate that to respond to the request the county would have to prepare a custom-generated report to combine data, which would require significant formatting. In this regard, we note that section 552.231 of the Government Code sets out the procedures a governmental body must follow if responding to a request for information would require programming or manipulation of data. According to section 552.003(2), “manipulation” means “the process of modifying, rendering, or decoding of information with human intervention.” A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information, or seek a ruling from this office as to whether the information is excepted from disclosure. *See* 31 S.W. 3d at 682. A request for public information that requires a governmental body to program or manipulate existing data is not considered a request for the creation of new information. *Id.* Thus, the county’s officer for public information carries the duty of promptly producing such public information when it is requested, unless the county wishes to withhold the information. *Id.* §§ 552.203, .221.

As you timely submitted a request for a ruling as to whether the requested information is excepted from disclosure, we will address your arguments. Section 552.117(a) of the Government Code requires the withholding of specific personal information concerning government employees under certain circumstances.² Section 552.117(a)(1) excepts from disclosure the home addresses of current or former officials or employees of a governmental body who timely elect to keep this information confidential. Section 552.117(a)(2) excepts from disclosure the home addresses of peace officers, regardless of whether the officer has made a timely election to keep this information confidential. 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).

The department may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who elected to keep their home addresses confidential prior to the date on which the request for this information was made. If the

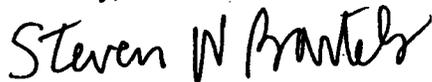
²In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature amended section 552.117 of the Government Code by adding “(a)” to the relevant language of this provision. *See* Act of May 30, 2003, 78th Leg., R.S., ch. 947, 2003 Tex. Sess. Law Serv. 2822 (Vernon) (to be codified as an amendment to Gov’t Code § 552.117).

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 ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 195202

Enc. Submitted documents

c: Mr. Gerald A. Burks
500 Ferry Road
Galveston, Texas 77550
(w/o enclosures)