



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2005

Mr. Riley Simpson
Housing Authority of the City of Copperas Cove
701 Casa Circle
Copperas Cove, Texas 76522

OR2005-03326

Dear Mr. Simpson:

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# 222245.

The Housing Authority of the City of Copperas Cove (the "housing authority") received a request for fourteen categories of information regarding the selection process and final selection for a specific position. You claim that you have no information for seven items.¹ You state that you have answered one item of the request, but claim that the submitted documents are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

You claim that some of the submitted information is confidential under section 405(c)(2)(C)(viii) of Title 42 of the United States Code. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 405(c)(2)(C)(viii) of Title 42 of the United States Code, which makes confidential social security numbers and related records that are obtained and

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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). After reviewing the submitted information, we find that there are no social security numbers. Thus, the housing authority may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii) of Title 42 of the United States Code.

You also claim that the submitted information is confidential under *Houston Independent School District v. Houston Chronicle Publishing Co.*, 798 S.W.2d 580 (Tex. App.—Houston [1st Dist.] 1990). Section 552.101 of the Government Code also encompasses information made confidential by judicial decisions. In this case, the court found that absent a legislative mandate to the contrary, a newly adopted exception to the Act applies to records as of the effective date of the exception, even if there is a pending request for the records. This case does not, however, make information confidential. Further, you have not demonstrated nor can we ascertain how the cited case relates to the submitted information. Thus, the housing authority may not withhold any of the submitted information under this case.

We note that some of the highlighted information may be protected by section 552.117.² Section 552.117(a)(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 request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(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). Further, section 552.117(a) only applies to current or former employees not to applicants who are not current or former employees. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). Thus, the housing authority may not withhold any information that pertains to applicants if they are not current or former employees. As to the employee whose information is at issue, you do not inform us nor provide documentation showing that she timely elected confidentiality under section 552.024. Thus, if the employee timely elected to keep her personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. If the employee did not make a timely election to keep the information confidential, the marked information must be released.

²The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We also note that the highlighted information contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address contained in the submitted information is not the type specifically excluded by section 552.137(c). Therefore, unless the individual whose e-mail address is at issue consented to release of the e-mail address, the housing authority must withhold it in accordance with section 552.137 of the Government Code.

In summary, if the employee, whose information is at issue, timely elected to keep her personal information confidential, you must withhold her information, which we have marked, under section 552.117(a)(1) of the Government Code. However, if the employee did not make a timely election to keep the information confidential it must be released. Additionally, unless the individual whose e-mail address is at issue consented to release of the e-mail address, the housing authority must withhold it in accordance with section 552.137. The remaining information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 222245

Enc. Submitted documents

c: Mr. Jackson Roach
2020 Babb Street
Copperas Cove, Texas 76522
(w/o enclosures)