



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2005

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2005-03370

Dear Mr. Gambrell:

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# 222271.

The City of Houston (the "city") received a request for information related to the interviews of four named individuals, including the requestor, for a specified administrative coordinator position. You claim that portions of the requested information are excepted from disclosure under sections 552.117, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your acknowledgment of your noncompliance with section 552.301 of the Government Code. *See* Gov't Code § 552.301(d) (requiring governmental body to provide requestor with copy of written communication to the attorney general requesting an attorney general decision within ten business days after receipt of request for information). According 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 is public and must be released. A governmental body must release information presumed public under section 552.302, unless it demonstrates a compelling reason to withhold the information. *See 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 when some other source

of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.122 of the Government Code is a discretionary exception under the Act and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, the city may not withhold any of the submitted information under section 552.122. Because your remaining claims under sections 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, home 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. *See* Gov't Code § 552.117(a)(1). 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). Thus, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made request for confidentiality under section 552.024 prior to the date on which the request for this information was made. In this instance, two of the applicants at issue were city employees at the time of their applications for the administrative coordinator position. You do not indicate, however, whether these employees made timely elections to keep their home addresses, home telephone numbers, social security numbers, and family member information confidential. If these employees elected prior to the receipt of this request to keep the information we have marked confidential, the city must withhold this information pursuant to section 552.117(a)(1). Also, the submitted documents reflect that another applicant whose information is at issue may be a current or former employee of the city. To the extent that this applicant is a current or former employee of the city and made a timely election under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). The city may not withhold personal information for 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). We note that, under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023. Thus, the requestor has a special right of access to his own section 552.117 information.

Even if not confidential under section 552.117 of the Government Code, social security numbers may be confidential under federal law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either

constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. This section encompasses the amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that 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). We have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that such information is not obtained or maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.130 excepts information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. The city must withhold the information we have marked under section 552.130 of the Government Code. We note that the requestor also has a special right of access under section 552.023 of the Government Code to his own driver’s license and motor vehicle information. *See* Gov’t Code § 552.023.

Section 552.137 of the Government Code provides, in relevant part, that “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). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. You indicate that the owner of the e-mail addresses you have marked has not consented to their release. These e-mail addresses do not appear to be of the type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses it has marked under section 552.137 of the Government Code.

In summary, the city must withhold the marked information subject to section 552.117(a)(1) of the Government Code for those current or former city employees who made timely elections under section 552.024 of the Government Code. Regardless of whether section 552.117(a)(1) of the Government Code applies, the submitted social security numbers may be confidential under federal law. The marked Texas motor vehicle record information must be withheld pursuant to section 552.130 of the Government Code. The marked e-mail

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<sup>1</sup> This office will raise a mandatory exception like section 552.101 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

addresses must be withheld under section 552.137 of the Government Code. The remaining information must be released to the requestor.<sup>2</sup>

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

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<sup>2</sup> We note that the information being released contains information relating to the requestor that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. If the city receives another request for this information from a person who would not have a special right of access to the requestor's information, the city should resubmit this same information and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 222271

Enc. Submitted documents

c: Mr. Luis Soto  
c/o Rashaad V. Gambrell  
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(w/o enclosures)