



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2005

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney - Civil Section
City of San Antonio
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2005-03500

Dear Ms. Dye:

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# 222675.

The Bexar County Auditor's Office (the "county") received a request for a list of county employees to include each employee's name, home address and telephone number, and "unique identifier." The requestor subsequently narrowed the request to exclude the unique identifier. You state that the county will provide the requestor with a list of names of all county employees. You seek to withhold from disclosure the home addresses and telephone numbers of county employees under section 552.1175 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.1175 is applicable to "county jailers as defined by Section 1701.001, Occupations Code[.]" Gov't Code § 552.1175(a)(1). Section 552.1175 further provides:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

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.

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). To the extent that the submitted information relates to an individual who was a county jailer, as defined by section 1701.001 of the Occupations Code, when the county received this request for information, the county jailer's home address and telephone number must be withheld under section 552.1175 if the county jailer elects to restrict access to that information in accordance with section 552.1175(b).

We note that section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175.² Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

You inform us that some of the requested information relates to individuals who were employed by the county as peace officers. To the extent that the information at issue relates to an individual who was a licensed peace officer under article 2.12 of the Code of Criminal Procedure when the county received this request for information, the peace officer's home address and telephone number must be withheld under section 552.117(a)(2). Section 552.117(a)(2) would not be applicable, however, to the home address or telephone number of an individual who was no longer a peace officer under article 2.12 of the Code of Criminal Procedure when the county received this request for information. *See also* Open Records Decision No. 670 (2001).

Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the county may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who requested confidentiality for the information under section 552.024 prior to the date of the county's receipt of the request for the information. The county may not withhold information under

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).

section 552.117(a)(1) on behalf of a current or former official or employee who did not make a timely request for confidentiality under section 552.024.

You state that some of the information at issue relates to individuals who elected to restrict access to their home addresses and telephone numbers prior to the county's receipt of this request for information. To the extent that the information at issue relates to a county employee who requested confidentiality for his or her home address or telephone number before the county received this request for information, the county must withhold the home address or telephone number of any such employee under section 552.117(a)(1). We note, however, that because a post office box number is not a "home address" for purposes of section 552.117, the county may not withhold a post office box number under section 552.117(a)(1). *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

In summary: (1) the home address and telephone number of an individual who was a county jailer when the county received this request for information must be withheld under section 552.1175 if the county jailer elects to restrict access to that information in accordance with section 552.1175(b); (2) the home address and telephone number of an individual who was a peace officer when the county received this request for information must be withheld under section 552.117(a)(2); and (3) the home address and telephone number of a county employee must be withheld under section 552.117(a)(1) if the employee timely requested confidentiality for his or her home address and telephone number under section 552.024. The county must release the rest of the requested information.

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

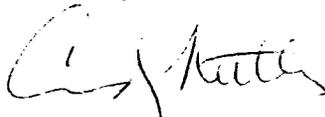
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 222675

Enc. Submitted documents

c: Mr. Larry Freilich
P. O. Box 49021
Austin, Texas 78765
(w/o enclosures)