



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2005-06842

Dear Mr. Patterson:

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# 229158.

The City of Waco (the "city") received a request for several categories of information, including specified personnel information. You state you will release some information but you claim that the submitted information is excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information consists of personnel information for a city employee. Section 552.117(a)(1) of the Government Code 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)*. You provide supporting documentation showing that, prior to the receipt of the request, the employee whose personnel information is at issue timely elected to keep his section 552.117(a)(1) information confidential. Thus, the city must withhold this marked information pursuant to section 552.117.

We note the submitted information also includes the phone numbers of other individuals. If any of these individuals are current or former officials or employees of the city and that individual has made a timely election under section 552.024, the city must withhold that individual's phone number under section 552.117. Moreover, one of these individuals is identified as a police officer. Section 552.117(a)(2) excepts from public disclosure a peace officer's telephone number regardless of whether the peace officer made an election under section 552.024 of the Government Code.¹ If this peace officer is a current or former city employee, the city must withhold her phone number regardless if she has made a timely election under section 552.024. If this peace officer is not a current or former employee of the city, her phone number may be excepted under section 552.1175 of the Government Code. If this individual is currently a licensed peace officer and she elects to restrict access to this information in accordance with section 552.1175(b), the city must withhold her phone number under section 552.1175. If this individual is not currently a licensed police officer or the city does receive a proper election, this information must be released.

You also claim that the marked Texas driver's license number is excepted from disclosure by section 552.130 of the Government Code. This section excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the marked Texas driver's license number. *See* Gov't Code § 552.130.

In summary, the city must withhold the marked section 552.117(a)(1) information of the employee whose personnel information is at issue. The city must withhold the phone number of a peace officer pursuant to section 552.117(a)(2) if she is a current or former employee of the city. If this individual is currently a peace officer and not employed by the city, the city must withhold this phone number if it receives an election to restrict access to it in accordance with section 552.1175. The city must withhold other individuals' submitted phone numbers if those individuals are current or former employees of the city and have restricted access to those numbers in accordance with section 552.117. The city must withhold the marked Texas driver's license number under section 552.130. The remaining information must be released.

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

¹ Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/sdk

Ref: ID# 229158

Enc. Submitted documents

c: Mr. Mark-Allen Coker
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(w/o enclosures)