



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2005

Ms. Charlotte A. Drew
The Drew Law Firm PLLC
Lakeside Professional Building
14884 Highway 105 West
Montgomery, Texas 77356

OR2005-10557

Dear Ms. Drew:

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# 236750.

The Magnolia Volunteer Fire Department (the "department"), which you represent, received a request for a list of department personnel with telephone numbers and addresses, station number of membership, and current status of membership, active or suspended. You claim that the department does not have to respond to the request. Alternatively, you claim that the submitted information is not public information subject to the Act. Finally, you claim the submitted information is excepted from disclosure under section 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹You also raise section 552.024 of the Government Code. Section 552.024 provides the manner in which an individual may choose to keep information confidential for purposes of section 552.117 of the Government Code. Accordingly, section 552.024 is not an exception to disclosure under the Act.

²We assume that the 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.

Initially, we address your contention that the department does not have to respond to the request because in order to respond the department “would have to review and update information held in multiple databases . . . and on paper . . . and then create a responsive document.” The Act does not require a governmental body to make available information which did not exist at the time of the request nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983); see Gov’t Code §§ 552.002, .021, .227, .351. However, the department must make a good faith effort to relate a request to the information it holds. Open Records Decision Nos. 561 (1990), 87 (1975); see Gov’t Code § 552.353 (providing penalties for failure to permit access to public information). Upon review of the submitted personnel information, we find that the department has made a good-faith effort to relate the request to responsive information that the department maintains. Accordingly, we will address your arguments against disclosure of the submitted information.

Next, we address your argument that the submitted information “is not public information in that it is not related to public funds.” Under the Act, all information, with certain exceptions, that is collected, assembled, or maintained by a “governmental body” is subject to required public disclosure. See Gov’t Code § 552.002(a)(1). Section 552.003(1)(A)(xii) includes within the definition of governmental body “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” We also note that the receipt of public funds for the general support of the activities of a private organization brings that organization within the definition of a “governmental body.” Open Records Decision No. 228 (1979).

“Whether or not a particular nonprofit volunteer fire department [is a governmental body subject to the Act] depends on the circumstances in each case, including the terms of the contract between the department and the public entity.” Attorney General Opinion JM-821 at 5 (1987) (citation omitted). In Attorney General Opinion JM-821, this office held that the Cy-Fair Volunteer Fire Department (“Cy-Fair”) was a governmental body for purposes of the Act’s predecessor to the extent that it was supported by public funds received pursuant to its contract with the Harris County Rural Fire Prevention District No. 9 (“RFPD”). See *id.* In issuing that opinion, this office analyzed the contract between Cy-Fair and RFPD, noting that Cy-Fair received public funds to provide all of RFPD’s needed services. See *id.* This office also noted that the contract provided that Cy-Fair must submit one-year operating budgets and a three-year capital expenditure budget to RFPD for approval. Consequently, this office found that the contract provided for the general support of Cy-Fair for purposes of the Act’s predecessor. *Id.*

In this instance, you state the department receives its funding from private fundraising and donations, private billing for certain department services, and a contract for services with the Montgomery County Emergency Services District No. 10 (“ESD”). You have submitted for

our review the department's contract with ESD, entitled "Fire Protection and Rescue Services Agreement" (the "Agreement"). Under that contract, the department provides "emergency fire control, suppression and extinguishment [sic] services, first responder services and emergency rescue services to and for the benefit of the residents, other individuals and property within [ESD's] territory." *See* Agreement, art. III. The contract also provides that the ESD will reimburse the department for specified costs incurred while providing these services. Furthermore, the contract specifically provides that the department "shall utilize responsible, competent and well-trained personnel in its provision of the referenced emergency services." *See id.* art. V, § 3, art. VI. The department is also required under the contract to provide ESD with reports relating to the department's budget and training for department personnel, to include a roster of all personnel of the department, and all other persons employed on a full- or part-time basis by the department, during the twelve months prior to the report date. *See id.* art. IX, § 18, art. X, § 6.

Based on your representations, our review of the contract at issue, and our holding in Attorney General Opinion JM-821, we find that ESD provides general support to the department, making the department a governmental body to the extent it received ESD's financial support. *See* Attorney General Opinion JM-821 at 5 (1987); *see also* Gov't Code § 552.003(1)(A)(xii). We further find that the submitted personnel information relates to a department function supported by public funds, and thus the submitted information is public information subject to release under the Act. Accordingly, we will address your arguments against release of the submitted information under the Act.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024. We note that section 552.117 does not protect from disclosure information that concerns an individual who is merely a volunteer for the department and not a former or current department employee or official. Therefore, information pertaining to such individuals is not excepted under section 552.117. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

We also note that section 552.117 does not except from disclosure an individual's date of birth. *See* Gov't Code § 552.117(a)(1). Further, an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See* 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).") (Emphasis added.); *see also* Open Records Decision

Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). However, section 552.117 encompasses a personal cellular telephone or mobile number, provided that the cellular or mobile service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use).

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 made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the department must withhold the employees' home addresses and personal contact numbers in the submitted information. The department may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. The department also may not withhold this information for volunteers. We have marked the submitted information that may be subject to section 552.117.

In summary, to the extent the marked addresses and contact numbers personally belong to department employees or officials who made a timely election under section 552.024, the marked information must be withheld under section 552.117. The remaining submitted 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 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); *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 Office of the Attorney General 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. 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/krl

Ref: ID# 236750

Enc. Submitted documents

c: Mr. Russell W. Copeland
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(w/o enclosures)