



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2006

Mr. Alan P. Petrov  
City Attorney  
City of West University Place  
1001 McKinney, Suite 1000  
Houston, Texas 77002-6424

OR2006-04985

Dear Mr. Petrov:

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# 248999.

The City of West University Place (the "city") received a request for any and all communications to and from nine named city employees during a specific time period and any information relating to a specified city police department (the "department") incident. You state that you do not maintain information that is responsive to several portions of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). You state that some of the requested information has been provided to the requestor. You claim that a portion of the submitted information is not "public information" subject to disclosure under the Act. You also claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, 552.106, 552.107, 552.108, 552.111, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>1</sup>

---

<sup>1</sup>We 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.

The Act applies to "public information," which is defined under section 552.002 as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also id.* § 552.021. You explain that some of the cellular telephone records at issue relate to the personal cellular phones of city employees. You state that these cellular telephone bills "are maintained in the individual's own name, the bills and invoices are mailed to the individual's home address, and the bills are paid for by the individual." Upon review, we agree that these cellular telephone records are not "public information" under the Act because the bills are not collected, assembled, or maintained by or for the city. *See id.* § 552.002. Next, you explain that several employees receive a monthly allowance for the use of a cellular telephone. However, you explain that the accounts are "maintained in the individual's own name, the bills and invoices are mailed to the individual's home address, and the bills are paid for by the individual." You further explain that no information is required to be provided to the city concerning these cellular phone records and state that the city "has no access to the records." Based on your representations, we agree that the cellular telephone records of these employees are also not "public information" under the Act, as you have demonstrated that the city does not collect, assemble, or maintain these records. *See id.* § 552.002.

Section 552.103 of the Governmental Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request,

and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

Based on your representations and our review of the information at issue, we conclude that the city has demonstrated that litigation was pending on the date it received the request for information. Furthermore, we find that the information at issue is related to the pending litigation for purposes of section 552.103. Therefore, the information in Exhibit B is excepted from disclosure at this time under section 552.103 of the Government Code.

Now we turn to your argument for the information in Exhibit C. Section 552.106 of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. See Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.*

You state that the information at issue are proposed ordinances and includes the policy considerations of these proposed changes. Based on your representations and our review of the information at issue, we agree that section 552.106 is applicable to some of this information. Accordingly, we have marked the information that must be withheld under section 552.106 of the Government Code. The remaining information in Exhibit C, however, consists of purely factual information and is not excepted under section 552.106. Therefore, this information may not be withheld on that basis and must be released.

Next, we address your claim of section 552.111 of the Government Code for the information in Exhibit D. Section 552.111 excepts “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6.

A governmental body’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* Additionally,

section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

You inform us that the information for which you claim section 552.111 consists of, “documents that would be considered inter and/or intra agency memoranda.” Having considered your representations and reviewed the information that you seek to withhold under section 552.111, we find that you have not sufficiently explained how any of the information at issue consists of advice, recommendations, or opinions reflecting the policymaking processes of the city. We therefore conclude that the city may not withhold any of the submitted information under section 552.111.

Next, the city claims that Exhibit E and I is subject to section 552.108, which provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108 (b). Section 552.108(b) may be applicable to internal records of a law enforcement agency, provided the law enforcement agency reasonably explains how and why release of the information at issue would interfere with law enforcement or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) exception intended to protect information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine law enforcement efforts). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision No. 531 at 2-3 (1989) (Penal Code

provisions, common law rules, and constitutional limitations on use of force are not protected under predecessor to section 552.108).

You state that the submitted department officers' cellular telephone numbers are designed for immediate access to the detectives. You further claim that release of this information would interfere with the department because it would impair the ability to immediately contact the law enforcement officer. Having reviewed your arguments and the submitted information, we agree that release of the officers' cellular telephone numbers would interfere with law enforcement or crime prevention. *See* Open Records Decision No. 506 at 2 (1988) (statutory predecessor to section 552.108(b) excepted from disclosure the cellular mobile phone numbers assigned to Harris County officials and employees with specific law enforcement responsibilities). Accordingly, the city may withhold the cellular telephone numbers we have marked in Exhibit I under section 552.108(b)(1) of the Government Code.

Next, you explain that the submitted information in Exhibit E contains emails which relate to information associated with the detection, investigation, or prosecution of crime. In this instance, the submitted information is held by the city, which is not a law enforcement agency. By its terms, section 552.108 applies only to a law enforcement agency or prosecutor. However, a non-law-enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and has been or will be forwarded to an appropriate law enforcement agency for investigation. *See* Attorney General Opinion MW- 575 (1982); *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to the incident). In this instance, you fail to demonstrate that the submitted information would interfere with any law enforcement interest, nor do you provide any representation from a law enforcement entity seeking to withhold this information. We therefore conclude that the requested information in Exhibit E is not protected section 552.108.

We note that certain submitted information in Exhibit E is excepted under section 552.130 of the Government Code.<sup>2</sup> Section 552.130 prohibits the release of 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. *See* Gov't Code § 552.130. The city must withhold the portions of the submitted information, which we have marked, that relate to Texas license or motor vehicle information under section 552.130.

The city asserts that the submitted information in Exhibit F is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You do not cite to any specific law, and we are not aware of any, that makes any portion of

---

<sup>2</sup>This office will raise mandatory exceptions to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the submitted information confidential under section 552.101. *See generally* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Therefore, we conclude that the city may not withhold any portion of the submitted information under section 552.101 of the Government Code. As you do not claim any other exceptions, such as section 552.108 for this information, Exhibit F must be released.

You claim that some of the remaining submitted information is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, pager 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.<sup>3</sup> Section 552.117(a)(1) protects the current and former home addresses and telephone numbers, social security number, and family member information of a current or former employee of a governmental body who requests that the information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined 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, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election under section 552.024 to keep the information confidential.

To the extent that the information that we have marked under section 552.117 relates to an individual who was a peace officer when the city received this request for information, the marked information must be withheld under section 552.117(a)(2). To the extent that the marked information does not relate to a peace officer, the information must be withheld under section 552.117(a)(1) if the individual to whom it relates requested confidentiality for the information under section 552.024 prior to the city's receipt of this request.

The submitted documents also contain information that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 of the Government Code provides:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

---

<sup>3</sup>Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business.

We determine that the e-mail addresses we have marked in the submitted information are within the scope of section 552.137(a). Unless the city has received affirmative consent to disclose the e-mail addresses, the city must withhold the marked e-mail addresses under section 552.137 of the Government Code.

The submitted documents labeled as Exhibit I contain information that is subject to section 552.136 of the Government Code. Section 552.136 of the Government Code makes certain account numbers confidential and provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We therefore conclude that the city must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code.

In summary, the cellular telephone records of some of the employees are not subject to the Act and need not be released. The city may withhold Exhibit B under section 552.103 and the information we have marked in Exhibit I under section 552.108. The city must withhold the information we have marked in Exhibit E under section 552.130, the information we have marked in Exhibits G and H under section 552.137, and the information we have marked in Exhibit I under section 552.136. If applicable, the city must withhold the information we have marked in Exhibits G and H under section 552.117. You must release the remaining responsive information 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); *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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID#248999

Enc. Submitted documents

c: Mr. Donald Hooper  
3547 Woodvalley  
Houston, Texas 77025  
(w/o enclosures)