



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2007

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2007-05967

Dear Mr. Toscano:

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# 279395.

The City of Dallas (the "city") received a request for four categories of information pertaining to the 2006 Dallas Fire Rescue Department Captain's Oral Assessment Center. You state that the city will release some of the requested information. You claim that some of the submitted information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

You claim that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) 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). We note that section 552.117(a)(1) of the Government Code is applicable to cellular telephone numbers only if the cellular telephone is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001).

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<sup>1</sup>We note that although you also raise section 552.107 of the Government Code, you make no arguments in support of this exception. Accordingly, this exception is waived. *See* Gov't Code §§ 552.301(e)(1)(A), .302; Open Records Decision No. 665 at 2 n.5 (2000).

<sup>2</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.

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 a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

You state that you have highlighted in green the personal cellular telephone number of a city employee. Therefore, the city may only withhold this information if the employee at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You also state that you have highlighted in yellow the assessors' home addresses, home telephone numbers, and personal cellular telephone numbers. We note that the assessors are not employed by the city. The city may not withhold personal information for an individual who is not a current or former employee. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). Accordingly, the city may not withhold the information you have highlighted in yellow under section 552.117(a)(1) of the Government Code.

The city claims that some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "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). 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. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, as well as the additional e-mail addresses we have marked, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary, the city must withhold the information you have highlighted in green under section 552.117(a)(1) of the Government Code if the employee at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. The remaining submitted information must be released 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).

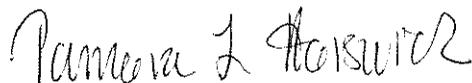
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/ma

Ref: ID# 279395

Enc. Submitted documents

c: Mr. James Aulbaugh  
P.O. Box 700813  
Dallas, Texas 75370  
(w/o enclosures)