



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2008

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR2008-00046

Dear Ms. Sims:

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# 302790.

The City of Lubbock (the "city") received a request for communications between the city manager, the city attorney, and Northstar Surgical Center during a specified period of time. You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. Specifically, 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. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, to the extent such information pertains to current or former city

¹Although you raise section 552.136 of the Government Code, we note that section 552.137 is the correct exception to raise for e-mail addresses.

employees who made timely elections for confidentiality under section 552.024, the city must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. However, an incomplete address that only states the intersection of two streets is not a “home address” for the purposes of section 552.117, and therefore the information that you have highlighted under section 552.117 may not be withheld under this section. *See id.* § 552.117; Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). We have marked the incomplete address that may not be withheld under section 552.117(a)(1) of the Government Code.

You claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code, which 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.
- (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. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Therefore, the city must withhold any personal e-mail addresses under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. However, to the extent that any of the personal e-mail addresses belong to employees of entities with which the city has contractual relationships, or fall under any of the other exceptions listed under subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137. We note that some of the information you have marked to withhold under section 552.137 is not an e-mail address. We have marked the highlighted that may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, to the extent such information pertains to current or former city employees who made timely elections for confidentiality under section 552.024, the city must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. Except for the information we have marked for release, the city must withhold personal e-mail addresses under section 552.137, 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 302790

Enc. Submitted documents

c: Mr. Armando Gonzales
3912 East 3rd Street
Lubbock, Texas 79403
(w/o enclosures)