



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2008

Mr. Charles E. Zech
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2008-00068

Dear Mr. Zech:

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# 298766.

The City of Live Oak (the "city"), which you represent, received a request for the phone bills of a specified cellular telephone number, which was paid for by the city, from January 1, 2007 to September 30, 2007. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You seek to withhold a phone number under common-law privacy. Upon review, however, we find that you have not demonstrated how the marked phone number is highly intimate or embarrassing and not of legitimate public interest. Therefore, this information may not be withheld under section 552.101 in conjunction with common-law privacy.

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. Gov't Code § 552.117. Additionally, section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *See Open Records Decision No. 670 at 6 (2001)* (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the city may only withhold information under section 552.117 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 received. We note that the protections of section 552.117 of the Government Code only apply to information that the governmental body holds in its capacity as an employer. *See Gov't Code § 552.117* (providing that employees of governmental entities may protect certain personal information in the hands of their employer). You state some of the telephone numbers listed in the submitted information may be those of city employees who timely elected confidentiality. Thus, the city must withhold the home telephone numbers and personal cellular telephone numbers of those individuals who are employed by the city and who timely elected confidentiality under section 552.117(a)(1) of the Government Code. The city may not withhold the home telephone numbers and personal cellular telephone numbers of individuals who are not employed by the city or who did not make timely elections.

Section 552.117(a)(2) excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or information that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.¹ *Id.* § 552.117(a)(2). You state that some of the submitted telephone numbers may be those of city peace officers. Accordingly, we conclude that the city must withhold those home telephone numbers and personal cellular telephone numbers pertaining to city peace officers pursuant to section 552.117(a)(2).

You claim that portions of the remaining information may be excepted under section 552.1175 of the Government Code, which provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has

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

family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). You state that portions of the remaining information may pertain to peace officers. Thus, any of the remaining telephone numbers that pertain to peace officers not employed by the city must be withheld under section 552.1175, if the peace officers at issue elect to keep their home telephone numbers and personal cellular telephone numbers confidential in accordance with section 552.1175(b)(2). If the peace officers at issue do not elect to keep this information confidential, then it must be released.

Section 552.136 of the Government Code states that “[n]otwithstanding 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.” *Id.* § 552.136. The city must, therefore, withhold the account number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the home telephone and personal cellular telephone numbers of city employees who timely elected confidentiality under section 552.117(a)(1). The city also must withhold any home telephone numbers and personal cellular telephone numbers of city police officers under section 552.117(a)(2) and the home telephone numbers and personal cellular telephone numbers of peace officers not employed by the city, if these officers elect confidentiality, under section 552.1175. Finally, the city must withhold the account number we have marked under section 552.136. 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 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 298766

Enc. Submitted documents

c: Mr. L. H. Homan, Jr.
6506 Silver Meadow
Spring Branch, Texas 78070
(w/o enclosures)