



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2008

Ms. Cara Leahy White
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
I-30 at Bryant-Irvin Road
Fort Worth, Texas 76107-4654

OR2008-01289

Dear Ms. White:

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# 300839.

The City of Ovilla (the "city"), which you represent, received a request for information related to the city's form of government, and for "the name, address, telephone number and age [of certain former city employees], along with the reason(s) each person's employment ended." You state that some responsive information will be released to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Gov't Code § 552.117. 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 city may only withhold information under section 552.117(a)(1) if the former employee elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the former employee timely elected, the city must withhold the individual's home address and home telephone number under section 552.117(a)(1). The city may not withhold this information under

section 552.117(a)(1), however, if the former employee did not make a timely election to keep the information confidential.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing 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). In this case, the individuals at issue are no longer employed as officers by the city; however, you indicate that these individuals remain licensed peace officers as defined by article 2.12. Therefore, the city must withhold the home addresses, home telephone numbers, and family member information of these peace officers pursuant to section 552.117(a)(2) of the Government Code.

We note that the submitted information contains W-4 forms. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted W-4 forms constitute tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

The submitted information also contains an F-5 form (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part that "[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code." Occ. Code § 1701.454(a). The city must withhold the F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Finally, we note that section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We have marked the information that the city must withhold under section 552.130 of the Government Code.

In summary, if the former employee made a timely election under section 552.024, the city must withhold the individual's home address and home telephone number under section 552.117(a)(1) of the Government Code. The city must withhold the home addresses, home telephone numbers, and family member information of peace officers pursuant to section 552.117(a)(2) of the Government Code. Under section 552.101 of the Government Code, the city must withhold (1) W-4 forms in conjunction with section 6103(a) of title 26 of the United States Code, and (2) the F-5 form in conjunction with section 1701.454 of the Occupations Code. We have marked the information that the city must withhold under section 552.130 of the Government Code. The remaining responsive 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# 300839

Enc. Submitted documents

c: Mr. William J. Dunleavy
8140 Walnut Hill Lane
One Glen Lakes, Suite 950
Dallas, Texas 75231
(w/o enclosures)