



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 8, 2008

Ms. Courtney Alvarez
City Attorney
City of Kingsville
P.O. Box 1458
Kingsville, Texas 78364

OR2008-06326

Dear Ms Alvarez:

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# 309843.

The City of Kingsville (the "city") received a request for the names and qualifications of the applicants for the position of Task Force Commander with the Kingsville Police Department, as well as the list of those who were interviewed. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code 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. Gov't Code § 552.117(a)(2). 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). The city must withhold the information of the officer currently employed by the city that we have marked under section 552.117(a)(2). However, you do not inform us, and the submitted information does not otherwise indicate, that any of the remaining applicants are employees of the city; therefore, you have failed to establish that any of the remaining information is excepted under section 552.117.

We note, however, that section 552.1175 of the Government Code may apply to the officer applicants who are not employed by the city.¹ Section 552.1175 provides in part the following:

(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 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 do not inform this office, nor does any of the submitted information indicate, whether the officers at issue have elected yet to keep this information confidential in accordance with subsections 552.1175(b)(1) and (2). Accordingly, the city must withhold the information we have marked under section 552.1175 if the officers elect to restrict access to this information in accordance with section 552.1175(b). If no elections are made, the city must release the information at issue.

Even if the submitted social security numbers are not withheld under section 552.1175, they may be withheld under section 552.147(b) of the Government Code. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² Section 552.147 is based on privacy. As such, the requestor has a right of access to his own social security number under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). The city may withhold the marked social security numbers under section 552.147 of the Government Code if no elections were made in accordance with section 552.1175(b).

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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Section 552.130 of the Government Code excepts from public disclosure 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 (a)(1)-(2). We have marked the information that is subject to section 552.130 of the Government Code. We note that section 552.130 also protects personal privacy. Accordingly, pursuant to section 552.023, the requestor has a right of access to his own Texas motor vehicle record information. Thus, the city must release the requestor's Texas motor vehicle record information. The city must withhold the marked information under section 552.130 of the Government Code.

We note that the submitted information includes an e-mail address. Section 552.137 of the Government Code states in part that "[e]xcept 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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Therefore, unless the individual whose e-mail address is at issue consented to release of his e-mail address, the city must withhold the marked e-mail address under section 552.137.

In summary, the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.1175 if the officers elect to restrict access to this information. The city may withhold the social security numbers that belong to individuals other than the requestor under section 552.147 of the Government Code if no elections were made in accordance with section 552.1175(b). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. Unless the individual whose e-mail address is at issue consents to the release of his e-mail address, the city must withhold the marked e-mail address under section 552.137. The remaining information must be released.³

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

³We note that because the requestor has a special right of access to some of the submitted information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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).

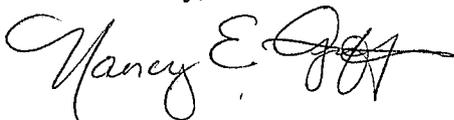
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 309843

Enc. Submitted documents

c: Mr. Juan J. Guzman
270 North CR 1030
Kingsville, Texas 78363
(w/o enclosures)