



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2008

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2008-08521

Dear Ms. Middlebrooks:

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# 313418.

The City of Dallas (the "city") received a request for all e-mails sent and received by a named city employee. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108 of the Government Code provides in relevant part the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

¹We 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.

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). You argue that the police officer's city-issued cellular telephone number you have marked is excepted from disclosure under section 552.108(b)(1) because the release of this cellular telephone number would interfere with the named police officer's law enforcement responsibilities. In Open Records Decision No. 506 (1988), we determined that the statutory predecessor to section 552.108(b) excepted from disclosure "the cellular mobile phone numbers assigned to [Harris C]ounty officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* Therefore, based on your representations and our review, we conclude that you have demonstrated that release of the cellular telephone number at issue would interfere with law enforcement. This cellular telephone number, which you have marked, may be withheld under section 552.108(b)(1) of the Government Code.

Next you assert that a portion of the remaining information is excepted from disclosure under section 552.117. Section 552.117(a)(4) excepts from disclosure the home address, home telephone number, personal pager and cell phone numbers, social security number, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175. Gov't Code § 552.117(a)(4). Section 552.117(a)(4) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note that the records contain the personal information of an officer who was killed in the line of duty. Thus, the city must withhold the information that you have marked under section 552.117(a)(4).

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. Gov't Code § 552.117(a)(1). 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 remaining information contains personal information pertaining to two city employees. You have not informed this office whether the employees at issue have elected confidentiality under section 552.024 of the Government Code. The city may only withhold information under section 552.117(a)(1) if the employees at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the employees at issue timely elected confidentiality, then the city must withhold the marked personal information under section 552.117(a)(1). However, the city may not withhold this information under section 552.117(a)(1) if the employees did not make a timely election to keep the information confidential.

Next you assert that a portion of the submitted information is confidential under section 552.136(b) of the Government Code, which 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. You inform us that an employee’s identification number is also used as an employee’s credit union bank account number. Thus, the city must withhold the information that you have marked under section 552.136 of the Government Code.

The remaining information also contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to 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* Gov’t Code § 552.137 (b). You do not inform us that the owners of the e-mail addresses affirmatively consented to release. Therefore, the city must withhold the e-mail addresses you have marked under section 552.137.

In summary, you may withhold the police officer’s cellular phone number that you have marked under section 552.108(b)(1). You must withhold the deceased officer’s information that is marked under section 552.117(a)(4). If the other employees at issue timely elected confidentiality, then the city must withhold the personal information marked under section 552.117(a)(1). However, the city may not withhold this information under section 552.117(a)(1) if the employees did not make a timely election to keep the information confidential. You must withhold the information that you have marked under section 552.136. You must withhold the e-mail addresses that you have marked under section 552.137. 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). If the governmental body does not file suit over 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

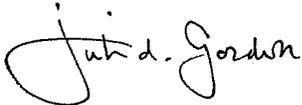
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/EEG

Ref: ID# 313418

Enc. Submitted documents

c: Ms. Tanya Eiserer
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)