



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 23, 2008

Mr. John S. Schneider, Jr.  
First Assistant City Attorney  
City of Pasadena  
P.O. Box 672  
Pasadena, Texas 77501

OR2008-09993

Dear Mr. Schneider:

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# 318770.

The City of Pasadena (the "city") received a request for "[a]ny application for any position of employment with [the city] submitted by [a named individual], information about the position(s) for which she applied, the other applications the city received for that same position, and the document showing who was selected for each position." You indicate that you are withholding social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You also indicate that some of the requested information may have been destroyed in accordance with the city's record retention policy. You claim that some of the submitted information is excepted from disclosure under sections 552.114, 552.117, 552.130, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold some of the submitted information under section 552.114 of the Government Code, which excepts from disclosure student records "at an educational

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<sup>1</sup>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.

<sup>2</sup>Although you raise sections 552.101 and 552.102 of the Government Code for employee home addresses, home telephone numbers, and family member information, we note that section 552.117 of the Government Code is the appropriate exception to raise for these types of information.

institution funded wholly or partly by state revenue.” Gov’t Code § 552.114(a). The Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(a), governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions only apply to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). The city, which maintains the information at issue, is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). You do not assert, nor does it appear from our review, that the city received these documents directly from the educational institutions at issue; therefore, the city has not established that section 552.114 and FERPA are applicable to the information at issue, and the city may not withhold the information on those grounds.

You assert that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security number, 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). You have submitted five election forms of city employees in which the employees elected to keep these types of information confidential. Four of these elections are dated and signed before the city received the request; therefore, we agree that the city must withhold the information pertaining to these four employees that you have marked under section 552.117(a)(1). The fifth election, however, is not dated; therefore, we are unable to determine whether this employee timely elected to withhold his information. Accordingly, the city must withhold under section 552.117(a)(1) the information you have marked, as well as the information we have marked, pertaining to this employee if he elected to keep his information confidential before the city received the request for information; however, the city may not withhold this employee’s information under section 552.117 if he did not make a timely election.

You assert that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We agree that the city must withhold the Texas driver’s license numbers you have marked, as well as the Texas motor vehicle record information we have marked, under section 552.130. However, section 552.130 does not encompass motor vehicle record information of other

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<sup>3</sup>We understand that some of the submitted applications pertain to individuals who were not hired by the city.

states; therefore, the city may not withhold the submitted Louisiana driver's license number, which we have marked for release, under that section.

Finally, you assert that some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137. The remaining information at issue, however, does not consist of an e-mail address of a member of the public that the city may withhold under section 552.137.

To conclude, the city must withhold the following: (1) the information marked under section 552.117 of the Government Code for the four employees who timely elected to withhold that information, and for the fifth employee if he also made a timely election; (2) the information marked under section 552.130 of the Government Code, except for the information that we have marked for release, and (3) the e-mail addresses we have marked under section 552.137 of the Government Code. The city must release the remaining information.

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

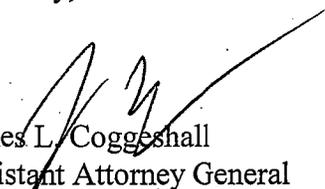
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental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



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ma

Ref: ID# 318770

Enc. Submitted documents

c: Ms. Janice E. Barlow  
Butler and Harris  
1007 Heights Boulevard  
Houston, Texas 77008  
(w/o enclosures)