



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2008

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bartlett
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2008-12432

Dear Mr. Koury:

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# 321604.

The City of Bartlett (the "city"), which you represent, received a request for information pertaining to two named employees. You state that you have released some of the information. You claim that portions of the submitted information are 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. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested third party may submit comments stating why requested information should or should not be released).

Initially, we note, and you acknowledge, that the city has not complied with the requirements of section 552.301 of the Governmental Code in requesting this ruling. *See Gov't Code § 552.301(b), (e)*. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling

reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because your claims under sections 552.117, 552.130 and 552.147 of the Government Code can provide compelling reasons for non-disclosure, we will address these exceptions.

Next, we note that some of the submitted information is not responsive to this request for information because it does not pertain to the named individuals. We also note that the requestor has excluded a specified citation from his request. This decision does not address the public availability of the non-responsive information, which we have marked, and the city need not release that information to the requestor.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note that section 552.117(a)(2) encompasses peace officers' cell telephone and pager numbers if the officer personally pays for the cell or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the officers whose information is the subject of this request are peace officers under article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked under section 552.117 of the Government Code.

We further note that section 552.1175 of the Government Code may apply to a portion of the submitted information. This section provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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(a), (b). Thus, the city must withhold the personal information we have marked under section 552.1175, if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). If no election is made, the city may not withhold this information under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" *Id.* § 552.130 (a)(1). Accordingly, the city must withhold the information you have marked, except as we have marked for release, under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.117 of the Government Code. The city must withhold the personal information we have marked under section 552.1175 of the Government Code if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b). The city must withhold the information you have marked, except as we have marked for release, under section 552.130 of the Government Code. The remaining information must be released.¹

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

¹As our ruling is dispositive, we need not address your remaining argument.

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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 321604

Enc. Submitted documents

c: Mr. D.S. Dantzler
P.O. Box 480
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(w/o enclosures)