



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2008

Mr. Robert C. Wendland  
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OR2008-12488

Dear Mr. Wendland:

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# 321492.

The Town of Northlake (the "town"), which you represent, received two requests for information pertaining to the town police department, town administrator, police chief, town computer system, and the termination of a specified police officer.<sup>1</sup> You state that the town has no information responsive to the request for witnesses and witness statements pertaining to the investigation.<sup>2</sup> You state that you have released most of the requested information to the requestors. You assert that the requested IP addresses are not public information subject to the Act. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your argument that the requested IP addresses do not constitute public information for purposes of the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6

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<sup>1</sup>You state that the town sought clarification and one of the requestors withdrew his request for all e-mails of the police chief and town administrator since January 1, 2008. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). Accordingly, we do not address your claim under section 552.103 for the non-existent information.

(construing predecessor statute). Based on the reasoning in this decision and our review of the information at issue, we determine that the requested IP addresses do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released.

Next, we must address the town's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) states, within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). The town received the first request for information on June 23, 2008. Accordingly, the responsive documents should have been submitted by July 15, 2008. The town did not submit the requested F-5 form until July 21, 2008. Consequently, we conclude that the town failed to comply with the requirements of section 552.301 of the Government Code with respect to the submitted F-5 form.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, the town claims the submitted F-5 form is excepted from disclosure under section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason for non-disclosure under section 552.302 we will address the town's claim for the F-5 form. In addition, we will consider your arguments for the timely submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as 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, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses." Occ. Code § 1701.454(a). In this instance, you state that the officer at issue did not resign and was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the town must withhold

the submitted F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Next, you assert that the submitted documents pertaining to new pay scale and rank structure are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (Gov't Code § 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

You state that the information at issue consists of the advice, opinions, and recommendations of the town's police chief. You also state that these documents involve policymaking matters relating to the budget of the town's police department for the upcoming year. The documents at issue consist of two pages of a proposed pay scale for different categories of police department employees and a page that sets forth proposed job duties for specific police department employees. Upon review of your representations and the information at issue, we agree that the two pages pertaining generally to the pay scale of the police department consist of the advice, opinions, or recommendations of the police chief on policy matters concerning administrative and personnel matters of broad scope. Therefore, the town may withhold these two pages, which we have marked, under section 552.111. However, you have not explained how the remaining information that pertains to the job duties of specific employees reveals the advice, opinions, or recommendations of the police chief with regard to administrative and personnel matters of a broad scope. Accordingly, the town may not withhold the remaining information under section 552.111. As you raise no further arguments against the disclosure of the remaining information, it must be released to the requestor.

Next, you claim that the duty cellular telephone number of the police chief is excepted from disclosure under section 552.108(b)(1). 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.” ORD 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.* We note that although you refer to Open Records Decision No. 506 as a previous determination, that decision is not a previous determination that would allow the town to withhold the police chief’s duty cellular telephone without first seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (setting forth specific circumstances under which, pursuant to section 552.301(a) of the Government Code, a governmental body can rely on a ruling from this office as a previous determination). A governmental body that seeks to withhold any information under section 552.108(b)(1) must provide this office with detailed arguments explaining how the release of that information would interfere with law enforcement. This office makes a determination of whether the release of particular information would interfere with law enforcement by considering the arguments of the governmental body and reviewing the information at issue on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). In this instance, you explain that the police chief “must utilize his cellular telephone for his specific law enforcement responsibilities” and that release of his cellular telephone number would interfere with those responsibilities. Therefore, based on your arguments and our review, we agree that the release of the police chief’s cellular telephone number would interfere with law enforcement. Thus, we conclude that the town may withhold the duty cellular telephone number of the police chief under section 552.108(b)(1) of the Government Code.

In summary, the requested IP addresses are not subject to the Act. The town must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The town may withhold the information we have marked under section 552.111 of the Government Code. The town may withhold the police chief’s cellular telephone number under section 552.108(b)(1) of the Government Code. The remaining 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). 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 321492

Enc. Submitted documents

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