



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2008-13349

Dear Ms. Byles:

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# 323159.

The City of Fort Worth (the "city") received a request for (1) the personnel and employment files of a named former city employee, (2) any documents, reports, or investigations pertaining to the named former city employee, (3) the city's equal employment opportunity, diversity, and affirmative action policies, plans, or procedures, (4) requests for proposals, invitations to bid, certified bids, contracts, invoices, remittances, or related documents pertaining to work performed by AT&T for the city in the last three years, (5) internal audits pertaining to any monies paid to or any work performed by AT&T for the past three years, and (6) information gathered by the city in response to a previous request for information. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.116, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We 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.

Initially, you state a portion of the submitted information was the subject of a previous request for information. Our office previously ruled upon portions of the submitted information in Open Records Letter No. 2008-10540 (2008). In that ruling, we ruled the city must release the requested information because the city did not provide our office with an explanation of why the stated exceptions apply or a representative sample of the requested information. We note section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See* Gov't Code § 552.007 (b). As a general rule, if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless public disclosure is expressly prohibited by law. Open Records Decision Nos. 490 (1988), 400 (1983). You seek to withhold the previously requested information under sections 552.103, 552.107, 552.111, and 552.116 of the Government Code. These sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, sections 552.103, 552.107, 552.111, and 552.116 do not prohibit release of information or make information confidential under law. In Open Records Letter No. 2008-10540, you waived the discretionary exceptions you claimed. Therefore, because the city has released the information at issue to members of the public in response to Open Records Letter No. 2008-10540, the city may not now withhold such information under the claimed discretionary exceptions. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We note, in this instance, you have submitted the requested information for our review. You also claim portions of the information at issue are confidential under sections 552.101 and 552.136. These exceptions make information confidential by law. Because section 552.007 does not apply to information made confidential by law, we will now address your arguments under sections 552.101 and 552.136 for the information at issue.

Section 552.101 of the Government Code 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. Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978)

(tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, over assessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability. . . for any tax, . . . penalty, . . . , or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), aff'd in part, 993 F.2d 1111 (4th Cir. 1993). You state the submitted information contains a W-4 form. Upon review, we find the information does not contain a W-4 form. Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with federal law.

You also claim section 552.136 of the Government Code for portions of the information that is subject to the previous ruling. Section 552.136 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." Gov't Code § 552.136. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument. *Id.* Upon review of the information you have marked, we find that a portion of this information, which we have marked, must be withheld under section 552.136 of the Government Code. For the remaining information you have marked, you have failed to demonstrate this information constitutes an access device number used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. We therefore conclude the city may not withhold the remaining information it has marked under section 552.136 of the Government Code.

Next, we note that the information not previously ruled upon is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the information not previously ruled upon is part of a completed investigation made by and for the city. This information must be released under section 552.022(a)(1) unless it is excepted from disclosure under

section 552.108 of the Government Code or expressly confidential under other law. Although you raise section 552.103 of the Government Code for this information, this exception is discretionary under the Act, and does not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76 (governmental body may waive section 552.103); ORD 542 at 4 (statutory predecessor to section 552.103 may be waived). Accordingly, the city may not withhold the information not previously ruled upon under section 552.103. You also claim section 552.137 for portions of the information at issue. Additionally, we note the information at issue contains information that may be subject to section 552.117 of the Government Code.<sup>2</sup> Because sections 552.117 and 552.137 are other laws for section 552.022 purposes, we will address the applicability of these exceptions to the information not previously ruled upon.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, 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 under 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)*. Thus, pursuant to section 552.117(a)(1), if the employee at issue made a timely election to keep his information confidential, then the city must withhold the employee's personal information we have marked. If the employee at issue did not make a timely election, then the city may not withhold the personal information we have marked under section 552.117(a)(1).

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). Gov't Code § 552.137(a)-(c). We note that the requestor has a right of access to his client's e-mail address. *Id.* § 552.137(b) (owner of e-mail address may consent to release of e-mail address). Therefore, the city may not withhold the e-mail address it has marked in the remaining information under section 552.137 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.136 of the Government Code. If the employee at issue timely elected confidentiality, then the

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

city must withhold the personal information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.<sup>3</sup>

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

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<sup>3</sup>We note, however, the submitted documents contain information that is confidential with respect to the general public. See Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the city receives another request for this information from someone other than this requestor or his client, the city must ask this office for a decision whether the information is subject to public disclosure.

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 323159

Enc. Submitted documents

c: Mr. Ty Gomez  
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(w/o enclosures)