



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2008

Ms. Teresa A. Special
Assistant City Attorney
City of San Angelo Legal Department
P.O. Box 1751
San Angelo, Texas 76902

OR2008-16464

Dear Ms. Special:

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# 329081.

The City of San Angelo (the "city") received a request for all correspondence from a named individual to city employees. You state that you will release some of the requested information. You claim the submitted information is not subject to the Act. Alternatively, you claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your contention that the submitted e-mails are not public information subject to the Act. The Act applies to "public information," which is defined under section 552.002 of the Government Code as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. You represent the e-mails at issue are personal in nature and are not connected with

the transaction of official business. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). After reviewing the information at issue, we agree most of the e-mails at issue are not subject to the Act. Accordingly, the city need not release the e-mails we have marked to the requestor.¹ However, we find that the remaining e-mail was created in connection with the transaction of official business. Therefore, this e-mail constitutes "public information" as defined by section 552.002(a) and is subject to the Act. Accordingly, we will consider whether the remaining information is excepted from disclosure.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular telephone 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.² 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, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Accordingly, to the extent the employee to whom this information pertains timely elected confidentiality for her information under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1).

In summary, the e-mails we have marked are not subject to the Act and need not be disclosed to the requestor. The city must withhold the information we have marked under section 552.117 of the Government Code if the employee at issue elected to keep such information confidential prior to the receipt of this request. 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

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

² 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).

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/ma

Ref: ID# 329081

Enc. Submitted documents

c: Requestor
(w/o enclosures)