



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2009

Ms. Cathie Childs
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2009-02548

Dear Ms. Childs:

This office issued Open Records Letter No. 2008-17496 (2008) on December 23, 2008. Subsequent to that ruling, you informed this office that you submitted the wrong information for this office to review concerning the request at issue in that ruling.¹ You have now submitted the correct information and ask this office to reconsider Open Records Letter No. 2008-17496. We have considered your request and will reconsider the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on December 23, 2008. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 337442.

The Austin Police Department (the "department") received a request for all records related to "computerized research" concerning three named individuals, all records related to the computer transfer of information between the department and three specified e-mail addresses, and all records related to the computer transfer of information between a named City of Austin employee, two specified e-mail addresses, and a school district. You state that

¹We note you inform us that the information originally submitted to this office for a ruling has been released to the requestor.

the department does not possess responsive information concerning some of the named individuals.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exception applies 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). In this instance, the department received this request on October 2, 2008. However, you did not submit a copy or representative sample of the requested information for our review until January 7, 2009. Thus, we find that the department failed to comply with the procedural requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural 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* Gov't Code § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Sections 552.101, 552.117, and 552.137 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require you to withhold the 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

²The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the department. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *C.f. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, upon review, none of the submitted information constitutes a compilation of these individuals' criminal history. Therefore, the department may not withhold the submitted information under section 552.101 on the basis of common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and 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. *See Gov't Code* §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5* (1989). The department may only withhold information under section 552.117(a)(1) on behalf of former or current employees who have made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In this instance, we have marked the information within the submitted documents that is generally subject to section 552.117. You inform this office that the department employee whose information we have marked elected to keep her personal information confidential. However, you do not indicate whether she made this election before the department received the instant request for information. We must, therefore, rule conditionally. If the employee whose personal information we have marked timely elected to withhold her personal information under section 552.024, this marked information must be withheld under section 552.117(a)(1). If this employee did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

Section 552.137 of the Government Code 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 Gov't Code* § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail addresses we have marked in accordance with section 552.137, unless the department receives consent for their release.

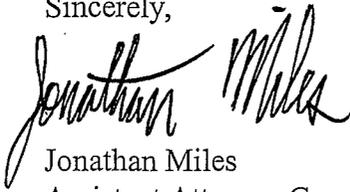
In summary, if the employee whose personal information we have marked timely elected to withhold her personal information under section 552.024, the department must withhold the marked information under section 552.117(a)(1) of the Government Code. The department

must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the department receives consent for their release. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 337442

Enc. Submitted documents

c: Requestor
(w/o enclosures)