



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2009

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2009-06751

Dear Ms. Graham:

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# 343331.

The City of Mesquite (the "city") received two requests from the same requestor for information related to bond-related trips made by the city council to New York City, names of all city council members and senior staff employees who have access to a city-issued credit card, an itemized report of city-issued credit card expenditures filed by the city manager, summary expenditure reports, and annual financial reports for a specified time period.<sup>1</sup> You state you are providing some of the requested information to the requestor. You state you have no information responsive to the request for bond-related trips in 2008.<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government

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<sup>1</sup> You state that some of the city council members' credit card statements have been redacted by such individuals prior to submission to the city.

<sup>2</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *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 Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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 § 552.101. This section encompasses common-law privacy which protects information if it (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). This office has concluded that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find that a portion of the information you have marked is highly intimate or embarrassing and of no legitimate public interest. However, you have not demonstrated how the information we have marked for release is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.117 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. See Gov't Code § 552.117. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. See Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. In this case you inform us, and provide documentation showing, that some of the employees whose personal information is at issue timely elected confidentiality under section 552.024. However, we note that one of the individuals who timely elected confidentiality under

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<sup>3</sup> We assume 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.

section 552.024 did not elect to withhold his home telephone number, another individual did not elect to withhold his home address and telephone number, and a third individual did not elect to withhold his home address, home telephone number, and information that reveals whether this individual has family members. Accordingly, the city must withhold the information we have marked under section 552.117(a)(1); however, the city may only withhold the marked cellular telephone numbers if the employees at issue paid for the cellular telephone with their own funds.

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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We note that some of the information you have marked under section 552.130 does not constitute Texas motor vehicle record information for the purposes of section 552.130. This information, which we have marked for release, may not be withheld under section 552.130. Accordingly, the city must withhold the marked Texas motor vehicle record information, except where we have marked for release, under section 552.130 of the Government Code.

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." *Id.* § 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 the city must withhold some of the information under section 552.136 of the Government Code. For the remaining information you have marked, you have failed to demonstrate this information constitutes access device numbers 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, with the exception of the information we have marked for release, the city must withhold the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code.

Section 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). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The city must withhold the e-mail addresses you have marked under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

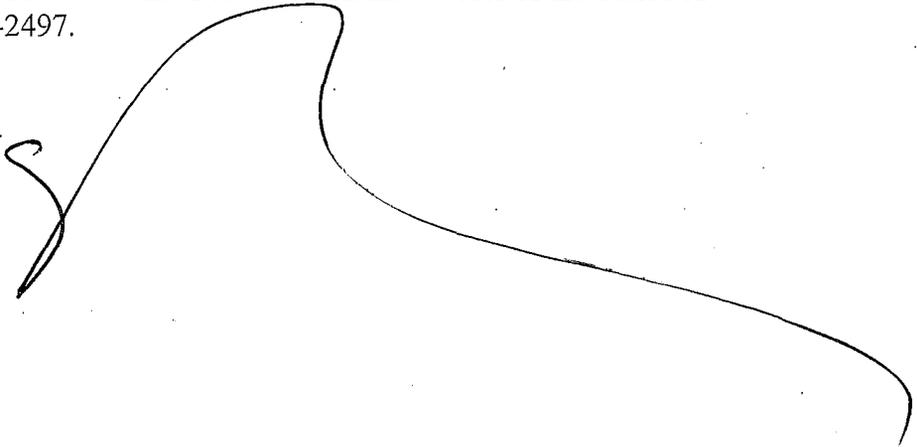
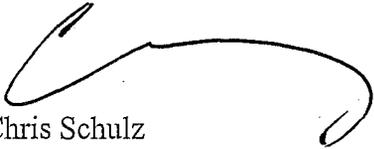
In summary, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 in conjunction with

common-law privacy. The city must withhold the information we have marked under section 552.117(a)(1); however, the city may only withhold the marked cellular telephone numbers if the employees at issue paid for the cellular telephone with their own funds. With the exception of the information we have marked for release, the city must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code. The city must withhold the e-mail addresses you have marked under section 552.137, unless the owner of the e-mail addresses have affirmatively consented to their public disclosure. 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](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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 343331

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)