



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2009

Ms. Xochil Rodriguez
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-15017

Dear Ms. Rodriguez:

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# 359046 (COSA File# 09-0877).

The City of San Antonio (the "city") received a request for correspondence between the Alameda National Center of Latino Arts and Culture ("Alameda") and the city during a specified time period and any audit of Alameda conducted within a specified time period. Although you take no position as to whether the submitted information must be released to the requestor, you state that the submitted documents may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the city notified Alameda of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* We have received arguments from Alameda. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office

to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Section 552.301(e) provides that a governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). The city received the request for information on July 15, 2009; however, you did not request a ruling from this office until August 18, 2009. Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

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. The governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information. *See* Gov't Code § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 319 (1982). Because a third party's interests can provide a compelling reason to overcome the presumption of openness, we will consider Alameda's arguments to withhold the submitted information. *See* Open Records Decision No. 150 (1977).

Alameda argues that some of its information is excepted under section 552.116 of the Government Code. However, this section is a discretionary exception that only protects the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As the city does not seek to withhold any information pursuant to section 552.116, we find this section does not apply to the submitted information. Therefore, the city may not withhold any of the information at issue pursuant to section 552.116.

We note that section 552.117 of the Government Code may be applicable to some of the submitted information.¹ Section 552.117(a)(1) excepts from disclosure the home address and

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, because this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117. Section 552.117 also encompasses a personal cell telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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. Therefore, the city must withhold the cellular telephone number we have marked under section 552.117(a)(1) to the extent that the employee at issue paid for the cellular telephone service and timely elected under section 552.024 to keep this information confidential. As no further exceptions to disclosure are raised, the city must release the remaining submitted information.

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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#359046

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Mr. Robert J. Perez
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