



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2009

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-15672

Dear Mr. Phillips:

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# 360557 (City Request No. 4457-09).

The City of Fort Worth (the "city") received a request for all electronic communications from seven named peace officers related to the June 2009 inspection of the Rainbow Lounge. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code and Rule 508 of the Texas Rules of Evidence. Further, you explain the submitted information may implicate the interests of the named peace officers. Accordingly you notified the Combined Law Enforcement Associations of Texas ("CLEAT"), which represents the named officers, of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). CLEAT responded to the notice and claims a portion of the submitted information is excepted from disclosure under Rule 503 of the Texas Rules of Evidence. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that a portion of the submitted information is not responsive to the request because it does not relate to the specified incident. This decision does not address the public

availability of non-responsive information, and the city need not release that information to the requestor.<sup>1</sup>

Next, we note that a portion of the submitted information consists of communications between the named officers and their attorney regarding personal legal matters. We note the Act is only applicable to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines public information 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.” *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987). After reviewing the information at issue, we find that the information we have marked is purely personal, and thus does not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the city. *See* Gov’t Code § 552.021; *see also* 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). Thus, the information we have marked is not subject to the Act, and need not be released in response to this request.<sup>2</sup>

We now address the city’s arguments. Section 552.117(a)(2) of the Government Code excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2); *See* Open Records Decision No. 622 (1994). You have redacted information in accordance with Open Records Decision No. 670 (2001), which is a previous determination by this office authorizing a governmental body to redact information pursuant to section 552.117(a)(2) without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Open Records Decision No. 670 at 6 (2001) (home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers may be withheld without necessity of requesting attorney general decision under section 552.117). We have marked additional information that must be withheld under section 552.117(a)(2).

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the

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<sup>1</sup> As our ruling is dispositive, we need not address your argument against disclosure of the information at issue.

<sup>2</sup> As our ruling is dispositive, we need not address CLEAT’s argument.

owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, 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. Accordingly, the city must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners consent to disclosure.

In summary, the information we have marked is not subject to the Act and need not be released. The city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2). The city must withhold the information you have marked, and the additional information we have marked under section 552.137, unless the owners of the e-mail addresses consent to release. The remaining responsive 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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 360557

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Mr. Richard W. Carter  
CLEATS Senior Attorney  
904 Collier  
Fort Worth, Texas 76102  
(w/o enclosures)