



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2010

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2010-01269

Dear Ms. Byles:

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# 368233.

The City of Fort Worth (the "city") received a request for (1) three categories of information pertaining to the city's police department, (2) video recordings of specified events, (3) certain e-mail correspondence of five named individuals, and (4) certain employment information pertaining to seven named individuals. You state some of the requested information will be released with redactions made under section 552.117 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.137 of the Government Code.<sup>2</sup> You also state,

---

<sup>1</sup>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. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c)).

<sup>2</sup>Although you have also marked a portion of the submitted information under section 552.104 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

and provide documentation showing, you notified the United States Department of Justice of the request and 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).<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply 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. *See id.* § 552.301(e). We note section 552.263(e) of the Government Code provides a request for public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs. *See id.* § 552.263(e). The submitted documentation indicates the requestor accepted the cost estimate and submitted the requested deposit, which the city received on October 30, 2009. Thus, pursuant to section 552.263(e), October 30, 2009 is the date the city received the request for the purposes of section 552.301. However, you did not submit a portion of the responsive information until December 29, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the city failed to comply with the requirements of section 552.301 as they pertain to the information submitted on December 29, 2009.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 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

---

<sup>3</sup>As of the date of this decision, this office has not received correspondence from the Department of Justice.

<sup>4</sup>We assume that 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.

S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). As of this date, our office has not received arguments objecting to the disclosure of the information submitted on December 29, 2009. Thus, this information must be released to the requestor.

You have marked a submitted e-mail communication that you contend is 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 assert the e-mail communication at issue is personal in nature and does not relate to the official business of the city. *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). Upon review, we agree the e-mail at issue is personal and does not pertain to the official business of the city; thus, it does not constitute public information as defined by section 552.002 of the Government Code. Therefore, the city is not required to disclose this information under the Act.<sup>5</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 Code § 552.101. This section encompasses the common-law right of 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental

---

<sup>5</sup> As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We note, however, the common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Upon review, we agree portions of the remaining information are highly intimate or embarrassing and of no legitimate concern to the public. The city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public, or the information pertains to a deceased individual. Accordingly, the city may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

You claim portions of the remaining information are subject to section 552.103 of the Government Code, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex.

App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551 at 4. A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

To establish litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded a governmental body’s receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, is sufficient to establish that litigation is reasonably anticipated.

You state, and provide documentation showing, prior to the city’s receipt of the request, a lawsuit styled *Jacobs v. City of Fort Worth*, Cause No. 4-09-CV-513-Y, was filed and is currently pending in the United States District Court for the Northern District of Texas. Therefore, we agree litigation was pending on the date the city received the present request for information. You have labeled a portion of the information at issue as relating to the “Jacobs lawsuit,” and state this information pertains to the same incident upon which the pending lawsuit is based. Based on your representations and our review, we agree this information relates to the pending litigation. Therefore, the city may generally withhold the information you have marked relating to the “Jacobs lawsuit” under section 552.103 of the Government Code.

Further, you state, and provide documentation demonstrating, the city received a notice of claim prior to the city’s receipt of the request for information. You affirmatively represent this letter meets the notice requirements of the Texas Tort Claims Act. Based on this representation, we agree litigation was reasonably anticipated on the date the city received the request. You have labeled a portion of the information at issue as relating to the “Vargas lawsuit,” and state this information pertains to the same issue upon which the anticipated litigation is based. Based on your representations and our review, we agree this information relates to the anticipated litigation. Therefore, the city may generally withhold the information you have marked relating to the “Vargas lawsuit” under section 552.103 of the Government Code.<sup>6</sup>

We note you have also labeled a portion of the remaining information under section 552.103; however, you have not adequately explained how this information relates to any anticipated or pending litigation involving the city. Therefore, this information may not be withheld under section 552.103 of the Government Code.

---

<sup>6</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure as they pertain to this information.

We note that once the information at issue has been obtained by all parties to the pending or anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending or anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Next, you claim section 552.107(1) of the Government Code for portions of the remaining information. Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege, unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the portions of the submitted e-mails you have marked constitute communications between and amongst city staff, outside consultants, and city attorneys that were made for the purpose of providing legal advice to the city. You state these communications were made in confidence and have maintained their confidentiality. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, the city may withhold the information you have marked under section 552.107 of the Government Code.<sup>7</sup>

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state submitted Exhibit C-4 relates to ongoing criminal investigations. Upon review, we agree section 552.108(a)(1) is applicable to Exhibit C-4. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Apart from basic information, the city may withhold Exhibit C-4 under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone

---

<sup>7</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure as they pertain to this information.

numbers assigned to county officials and employees with specific law enforcement responsibilities.” *Id.* at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You have marked a police officer’s cellular telephone number under section 552.108(b)(1). You assert the public release of this telephone number would interfere with the detection, investigation, or prosecution of crime. Based on your representations, we agree the city may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

You assert portions of the remaining information are excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *See Gov’t Code § 552.111; see also Open Records Decision No. 615 at 2 (1993).* Section 552.111 of the Government Code excepts from public disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” *Gov’t Code § 552.111.* The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); *Open Records Decision No. 538 at 1-2 (1990).*

In *Open Records Decision No. 615*, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See ORD 615 at 5.* A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See Open Records Decision No. 631 at 3 (1995).* Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See ORD 615 at 5.* But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See Open Records Decision No. 313 at 3 (1982).*

This office also has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be

excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Further, section 552.111 can encompass communications between a governmental body and a third party consultant. *See* Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 563 at 5-6 (1990) (private entity engaged in joint project with governmental body may be regarded as its consultant), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You state the information at issue reveals advice, opinions, and recommendations pertaining various city policymaking matters. You also indicate the information at issue includes communications between the city and third parties pertaining to policymaking in which the parties share a privity of interest or common deliberative process. Further, you state some of the submitted information consists of draft documents prepared by city staff that necessarily reflect the advice, opinion, and recommendations of the drafter. Based on your representations and our review of the information at issue, we find you have established the deliberative process privilege is applicable to a portion of the information at issue, which we have marked. Therefore, the city may generally withhold the marked information under section 552.111 of the Government Code. You do not inform us, however, whether the draft documents at issue will be released to the public in their final form. Therefore, provided the submitted draft documents will be released to the public in their final form, the city may withhold them under section 552.111 of the Government Code. However, we find the remaining information consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Further, we find a portion of the remaining information was communicated with non-privileged parties, and you have failed to demonstrate how the city shares a privity of interest or common deliberative process with these individuals. Thus, you have failed to demonstrate, and the information does not reflect on its face, that this information reveals advice, opinions, or recommendations that pertain to policymaking. Accordingly, we find none of the remaining information is excepted from disclosure under section 552.111, and it may not be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked information that may be subject to section 552.117(a)(2). We are unable to determine from the information provided whether the individuals at issue are still licensed peace officers. Thus, we must rule conditionally. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information we have marked under section 552.117(a)(2); however, the city may only withhold a cellular telephone number if the cellular telephone service was paid for with the employee's own funds.

If the individuals are not currently licensed peace officers, section 552.117(a)(1) may apply to the information at issue, as well as to information relating to other former or current employees. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). We note the information at issue contains, in part, personal information pertaining to a deceased employee. Because the protection afforded by section 552.117 includes "current or former" officials or employees, the protection does not lapse at death, except with regard to the deceased's social security number. We note, however, the protection afforded by section 552.117 does not extend to information relating to a deceased family member. *Cf.* Attorney General Opinions JM-229, H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981). Whether a particular piece of information is protected by 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. Accordingly, to the extent that the employees to whom this information pertains timely elected confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1); however, the city may only withhold a cellular telephone number if the cellular telephone service was paid for with the employee's own funds.

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). Gov’t Code § 552.137(a)-(c). The e-mail addresses you have marked, and the additional e-mail addresses we have marked, do not appear to be of types specifically excluded by section 552.137(c) of the Government Code. Therefore, the city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the city has received consent for their release.<sup>8</sup>

In summary, the e-mail communication we marked is not subject to the Act and need not be released. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold (1) the information you marked relating to the “Jacobs lawsuit” and the “Vargas lawsuit” under section 552.103 of the Government Code, (2) the information you marked under section 552.107 of the Government Code, (3) with the exception of basic information, Exhibit C-4 under section 552.108(a)(1) of the Government Code, (4) the information you marked under section 552.108(b)(1) of the Government Code, and (5) the information we marked under section 552.111 of the Government Code; however, the draft documents may only be withheld if they will be released to the public in their final form. The city must withhold the information we marked under section 552.117(a)(2) of the Government Code, to the extent the individuals at issue are currently licensed peace officers. If the individuals are not currently licensed peace officers, to the extent the employees timely elected confidentiality under section 552.024, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city must also withhold the information we marked under section 552.117(a)(1) pertaining to all other current or former employees, to the extent those employees timely elected confidentiality. In either case, a cellular telephone number may only be withheld if the cellular telephone service was paid for with the employee’s own funds. The city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the city has received 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](http://www.oag.state.tx.us/open/index_orl.php),

---

<sup>8</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/rl

Ref: ID# 368233

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Mr. Ovie Carroll  
Director  
U.S. Department of Justice  
Computer Crime & Intellectual Property Section  
John C. Keeney Building  
10<sup>th</sup> & Constitution Avenue, Northwest, Suite 600  
Washington, DC 20530  
(w/o enclosures)