



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2010-01445

Dear Mr. Bright:

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# 368755.

The Texas Alcoholic Beverage Commission (the "commission") received a request for information pertaining to a specified use of force investigation.¹ You state the commission has released some of the requested information. You also state that the commission will redact the personal telephone number of a commissioned peace officer pursuant to the previous determination issued by this office in Open Records Decision No. 670 (2001).² You claim that portions of the submitted information are excepted from disclosure under

¹We note the requestor has excluded from his request criminal history information. Any such information in the requested information is not responsive to this request. The commission need not release nonresponsive information and this ruling will not address it.

²See Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

sections 552.117 and 552.1175 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information:

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 sections 552.024 and 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Upon review, we find that the information we have marked consists of the personal information of a commissioned peace officer formerly employed by the commission. Accordingly, the information we have marked must be withheld under section 552.117(a)(2) of the Government Code. Further, you indicate that some of the remaining telephone numbers may relate to peace officers or their family members. However, you have failed to identify any such telephone number. Thus, we must rule conditionally. To the extent you determine any of the remaining submitted telephone numbers consist of the home or personal cellular telephone number of currently licensed peace officers who are former or current employees of the commission or to the family members of such officers, that information must be withheld under section 552.117(a)(2). To the extent the remaining submitted telephone numbers do not consist of the home or personal cellular telephone number of currently licensed peace officers or their family members, that information may not be withheld under section 552.117(a)(2).

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

³Although you claim section 552.1175 of the Government Code for information relating to employees of the district, we note that the relevant exception in this instance is section 552.117 of the Government Code.

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 also encompasses personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. You indicate that some of the remaining telephone numbers may relate to peace officers who are not employed by the commission or to those officers' family members. However, you have failed to identify any such telephone number. Therefore we again rule conditionally. To the extent the commission determines the remaining submitted telephone numbers consist of the home or personal cellular telephone numbers of currently licensed peace officers who elect to restrict access to that information in accordance with section 552.1175(b), or to those officers' family members, the commission must withhold those telephone numbers under section 552.1175.⁵ However, to the extent the remaining submitted telephone numbers do not pertain to licensed peace officers or pertain to peace officers who do not elect to restrict access in accordance with section 552.1175(b), the commission may not withhold the telephone numbers under section 552.1175.

We note the remaining information contains an account number subject to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of [the Act], 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The commission must withhold the account number we have marked under section 552.136 of the Government Code.

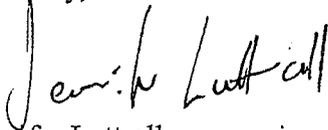
In summary, the information we have marked must be withheld under section 552.117(a)(2) of the Government Code. To the extent the commission determines that any of the remaining submitted telephone numbers consist of the home or personal cellular telephone number of currently licensed peace officers who are former or current employees of the commission or to the family members of such officers, that information must be withheld under section 552.117(a)(2). To the extent the commission determines the remaining submitted telephone numbers consist of the home or personal cellular telephone numbers of currently licensed peace officers who elect to restrict access to that information in accordance with section 552.1175(b), or to those officers' family members, the commission must withhold those telephone numbers under section 552.1175. The commission must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.

⁵Governmental body may redact personal information of peace officer without necessity of requesting decision from this office. *See* Gov't Code § 552.1175(f).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 368755

Enc. Submitted documents

c: Requestor
(w/o enclosures)