



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

Mr. John Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR2010-16126

Dear Mr. Schneider:

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# 397974.

The City of Pasadena (the "city") received a request for the following: (1) specified citations issued in a specific location over a particular time period; (2) records pertaining to posted warning signs for loading or unloading school buses near the specified location; (3) whether any municipal court judges have family members who are employed by the city; (4) records pertaining to money received by any municipal court judge from the city; (5) records pertaining to money received by any family member of a municipal judge who is also employed by the city; and (6) records pertaining to business contracts, bids, receipts, invoices, or records of other commercial activity between the city and any municipal judge or family member of a municipal judge.¹ You state the city has released information responsive to items one, two, and four above. You claim the submitted information is excepted from disclosure under section 552.117 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the request for records pertaining to money received by any family member of a municipal judge who is also employed by the city and records pertaining to business contracts, bids, receipts, invoices,

¹We note the city received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note that although you raise sections 552.101 and 552.102 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information.

or records of other commercial activity between the city and any municipal judge or family member of a municipal judge. Thus, to the extent any information responsive to these portions of the request existed when the request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We note most of the submitted information is not responsive to the instant request because it does not pertain to whether any municipal court judges have family members who are employed by the city. We have marked the nonresponsive information for your convenience. The city need not release the marked nonresponsive information in response to this request, and this ruling will not address that information.

Next, we must address the city's procedural obligations under the Act. Section 552.301 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(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the city received the request for information on August 2, 2010. However, the envelope in which you mailed your request for a ruling is meter-marked August 17, 2010 and the envelope in which you mailed the information at issue is meter-marked August 24, 2010. *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). Consequently, we find the city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, 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. Open Records

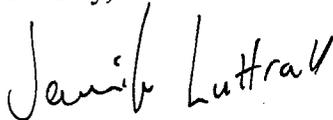
Decision No. 150 at 2 (1977). Because section 552.117 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the responsive information.

Section 552.117(a)(1) of the Government Code excepts from 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* Gov't Code §§ 552.117, .024. 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. You inform us, and provide documentation showing, that the employees at issue timely elected confidentiality under section 552.024. Therefore, the city must withhold the responsive information, which we have marked, under section 552.117(a)(1) of the Government Code.³

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

³We note section 552.024(c)(2) of the Government Code allows a governmental body to redact certain personal information pertaining to employees who properly elected to keep their information confidential without the necessity of requesting a ruling from this office. *See* Gov't Code § 552.024(c)(2).

Ref: ID# 397974

Enc. Submitted documents

c: Requestor
(w/o enclosures)