



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2011-02916

Dear Ms. Middlebrooks:

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# 409112 (DPD# 10-00840703).

The City of Dallas (the "city") received a request for the calendar and telephone logs for the city's mayor from a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 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). This office has found some kinds of medical information or information

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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). Upon review, we agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.108(b)(1) 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 seeking 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.) (Gov't Code § 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 the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile [telephone] numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted 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 assert the release of the cellular telephone numbers of government officials, which you have marked, would interfere with law enforcement and crime prevention. However, you do not identify any individuals whose cellular telephones are at issue as having specific law enforcement responsibilities, nor do you provide any explanation of how release of these cellular telephone numbers would interfere with those responsibilities, if any. Therefore, we find you have failed to demonstrate the release of the cellular telephone numbers you have marked would interfere with law enforcement. Thus, we conclude the city may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

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(a)(1). We note section 552.117 is only applicable to a current or former official employee of a Texas governmental body; therefore, section 552.117 does not apply to information pertaining to a current or former federal official. *See id.* § 552.003(1) (defining governmental body for purposes of the Act). Further, section 552.117 applies only to records the governmental body is holding in an employment capacity. Accordingly, we find section 552.117 does not apply to the information you have marked pertaining to individuals

who are not current or former employees or officials of the city. *Cf.* ORD 455 at 2 (statutory predecessor to Gov't Code § 552.117 not applicable to employment applicants).

Whether 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). The city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *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). You have not informed us whether the officials and employees whose personal information is at issue chose to withhold their personal information prior to the city's receipt of the request for information. Therefore, if an official or employee timely elected to withhold his or her personal information, the city must withhold that individual's information, which we have marked, under section 552.117(a)(1) of the Government Code. If the official or employee did not timely elect to withhold his or her personal information, then the city may not withhold the marked information for that individual under section 552.117(a)(1) of the Government Code. In addition, if a marked cellular telephone number was paid for by a governmental body, it may not be withheld under section 552.117(a)(1).

We note a portion of the remaining information may be excepted from disclosure under section 552.1175 of the Government Code.² Section 552.1175 provides in part:

(a) This section applies only to:

...
(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]

(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:

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (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)(5), (b). We note section 552.1175 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Therefore, to the extent the individual whose cellular telephone number we have marked elects to restrict access to this information in accordance with section 552.1175(b), and if the cellular telephone service is not paid for by a governmental body, the city must withhold this number under section 552.1175 of the Government Code. If the individual does not elect to restrict access to the information we have marked, then the city may not withhold this information under section 552.1175.

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). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses you have marked do not appear to be specifically excluded by section 552.137(c). *See id.* § 552.137(c). You inform us the owners of these e-mail addresses have not consented to their release. Accordingly, the city must withhold the e-mail addresses you have marked, and the additional e-mail address we have marked, under section 552.137 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent an official or employee whose personal information is at issue made a timely request for confidentiality under section 552.024, the city must withhold information we have marked for that individual, including a cellular telephone number if the city does not pay for the cellular telephone service, under section 552.117 of the Government Code. The city must withhold the cellular telephone number of the individual we have marked under section 552.1175 of the Government Code to the extent this individual elects with the city to restrict public access to his personal information, and if the cellular telephone service is not paid for by a governmental body. The city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The city must release the remaining 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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", with a stylized flourish at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 409112

Enc. Submitted documents

c: Requestor
(w/o enclosures)