



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2011

Ms. Barbara Boulware-Wells
Akers & Boulware-Wells, L.L.P.
Building E, Suite 102
6618 Sitio Del Rio Boulevard
Austin, Texas 78730

Ms. Teresa West
City Secretary/City Treasurer
City of Combine
123 Davis Road
Combine, Texas 75159

OR2011-04053

Dear Ms. Boulware-Wells and Ms. West:

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# 412096.

The City of Combine (the "city") received a request for the city's minutes and agendas for a specified time period, the state comptroller sales tax report, the electronic backup file for the city's financial records, and the city's general account and municipal court bank statements for a specified time period. We understand you have released the requested minutes and agendas, state comptroller sales tax report, and the general account bank statements for each month except the final month of the specified time period. You informed the requestor the general account bank statements for the final month of the specified time period were not available at the time of her request.¹ You also informed the requestor the city cannot release the municipal court bank statements because that information falls under

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

the purview of the municipal court.² We note you have redacted Social Security numbers pursuant to section 552.147 of the Government Code.³ You claim the electronic backup file is excepted from disclosure under section 552.117 of the Government Code.⁴ We have considered the exception you claim and reviewed the submitted representative sample of information.⁵ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note the submitted information includes information excepted from disclosure under section 552.102(a) of the Government Code.⁶ Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163

²We note although the Act encompasses information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body," the Act's definition of "governmental body" "does not include the judiciary." Gov't Code §§ 552.002(a)(1), .003(1)(B). "Information collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead "is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *see* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035); *see also* TEX. SUP. CT. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ).

³Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴Although the city raises section 552.024 of the Government Code as an exception to disclosure, we note this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert for this sort of information. Furthermore, although the city initially raised sections 552.101 and 552.110 of the Government Code for the city's financial software, you inform us the city received clarification from the requestor that she seeks a copy of the city's financial records, not a copy of the city's financial software. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). We therefore understand the city to have withdrawn its claim under sections 552.101 and 552.110. *See* Gov't Code §§ 552.301, .302.

⁵We 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.

⁶The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

(Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) 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* §§ 552.024, 117. We note section 552.117 also encompasses a personal cellular telephone number, provided that the service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-7 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You provide a representative sample of city employees' election of privacy forms in which the employees timely requested confidentiality of their home addresses, home telephone numbers, social security numbers, and family information under section 552.024. Accordingly, to the extent an employee timely elected confidentiality, then the city must withhold the home address, home telephone number, and social security number of that employee under section 552.117(a)(1) of the Government Code. However, if any of the cellular telephone numbers are from a cellular telephone service paid for by the city, then those telephone numbers may not be withheld under section 552.117(a)(1). If an employee did not timely elect confidentiality, the city may not withhold any of the information at issue under section 552.117(a)(1).

We note the requested information contains employee e-mail addresses. 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). We note section 552.137 is not applicable to an e-mail address maintained by a governmental entity for one of its officials or employees. Therefore, the city must withhold any employee e-mail addresses not maintained by a governmental body under section 552.137, unless their owners consent to their release.

We note the requestor seeks the information at issue in electronic format. *See Gov't Code* § 552.228(a) ("If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape."). In response, you explain the city would need to purchase third-party software in order to redact the confidential information from the requested electronic file. Section 552.228(b) of the Government Code requires a governmental body to provide

electronically stored information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *Id.* Therefore, because you state the city lacks the technological capability to redact the information at issue, the city may provide any information not excepted from disclosure in paper format or in another medium acceptable to the requestor. *See id.* 552.228(c).

In summary, the city must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent an employee timely elected confidentiality, the city must withhold the home address, home telephone number, personal cellular telephone number not paid for by a governmental body, and social security number of that employee under section 552.117(a)(1) of the Government Code. The city must withhold any employee e-mail addresses not maintained by a governmental body under section 552.137 of the Government Code, unless their owners consent to their release. The city must release the remaining information; however, because the city does not have the technological capability to redact information from the requested electronic backup file, the city may provide any information not excepted from disclosure in paper format or in another medium acceptable to the requestor.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 412096

Enc. Submitted documents

c: Requestor
(w/o enclosures)