



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 10, 2011

Mr. Robert J. Perez  
Shelton & Valadez, P.C.  
600 Navarro, Suite 500  
San Antonio, Texas 78205

OR2011-06436

Dear Mr. Perez:

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# 417220.

The City of Weslaco (the "the city"), which you represent, received a request for the following: (1) a specified agreement between the city and a former employee; (2) copies of checks issued to the former employee by the city over a specified period of time; and (3) information pertaining to the former employee's sick and vacation leave. You state the city does not have any information responsive to category (3) above.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section 143.089 of the Local Government Code.

---

<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See id.* at 949; Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied).

You represent Exhibit B was taken from the city police department's personnel file for the former employee, who was employed as a police officer. You state the city does not maintain the information in Exhibit B in any other location. Upon review, we agree Exhibit B constitutes an internal file maintained by the city's police department for its own use and thus, is confidential under section 143.089(g) of the Local Government Code. Accordingly, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>2</sup>

You assert some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. To the extent the former employee is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code.<sup>3</sup>

If the former employee is not currently a licensed peace officer, section 552.117(a)(1) of the Government Code applies to the information at issue. Section 552.117(a)(1) excepts from

---

<sup>2</sup>As our ruling on Exhibit B is dispositive, we need not address your remaining arguments against its disclosure.

<sup>3</sup>We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, personal pager and cellular telephone numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

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 who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). 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). You state, and provide documentation showing, the former employee elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the former employee is not currently a licensed peace officer, then city must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, 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. Accordingly, we find the city must withhold the bank account and routing number we have marked under section 552.136 of the Government Code.<sup>4</sup> The remaining information you have marked, which consists of the name and address of the city’s bank, the name of the account, and the check number, are not access devices for purposes of section 552.136 and may not be withheld on that basis.

In summary, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. If the former employee is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code. If the former employee is not currently a licensed peace officer, then city must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.136 of the Government Code. 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.

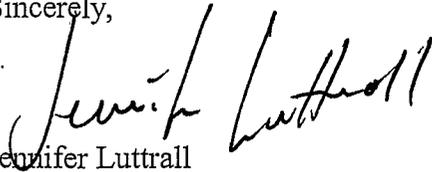
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

---

<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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 "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 417220

Enc. Submitted documents

c: Requestor  
(w/o enclosures)