



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 2, 2011

Mr. Richard L. Bilbie
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2011-07785

Dear Mr. Bilbie:

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# 419506.

The City of Harlingen (the "city") received a request for a list of members appointed by the city's mayor, city commissioners, or city manager to the city's boards, committees, and commissions ("board members"), including each board member's name, address, telephone number, e-mail address, and date of appointment; the name of the person who appointed the board member; the expiration date of the board member's term; the name of each board on which that member serves; and proof of Texas Public Information Act and Texas Open Meetings Act training for each board member. You state you have released some information to the requestor. You state the city does not have some of the requested information because not all board members are required to undergo Texas Public Information Act training. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. We note names, addresses, and telephone numbers are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Although you assert the board members' addresses, telephone numbers, and e-mail addresses are confidential under common-law privacy, upon review, we find no portion of the submitted information is highly intimate or embarrassing. Accordingly, we conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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, 552.117. 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). We further note, however, an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). 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 have not informed us whether the board members whose personal

information is at issue chose to withhold their personal information prior to the city's receipt of the request for information. Therefore, we must rule conditionally. To the extent a board member timely elected to withhold his or her home address or telephone number, the city must withhold that individual's information, which we have marked, under section 552.117(a)(1) of the Government Code. To the extent a board member did not timely elect to withhold his or her home address or telephone number, then the city may not withhold the marked information for that individual under section 552.117(a)(1). In addition, if a marked cellular telephone number was paid for by a governmental body, the city may not withhold it under section 552.117(a)(1).

You argue a portion of the remaining information is protected under section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. Upon review, we find you have failed to demonstrate how board members' cellular telephone numbers and e-mail addresses you seek to withhold under section 552.136 constitute access device numbers used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument for purposes of section 552.136. Therefore, the city may not withhold any of the remaining information under section 552.136 of the Government Code.

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). Additionally, we note section 552.137 does not apply to an e-mail address a governmental body maintains for its officials or employees. The e-mail addresses we have marked do not appear to be specifically excluded by section 552.137(c). *See id.*

§ 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners consent to their release.²

In summary, to the extent a board member timely elected to withhold his or her home address or telephone number, the city must withhold that individual's information, which we have marked, under section 552.117(a)(1) of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners consent to their release. 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_or1.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# 419506

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.