



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 16, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-08564

Dear Ms. Byles:

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# 421108 (Fort Worth PIR No. W007802).

The City of Fort Worth (the "city") received a request for information pertaining to city-issued cellular telephones.¹ You state some of the requested information will be released with redactions made under section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.² You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.151 of

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.117 of the Government Code excepts from 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. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c).

the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note the cellular telephone numbers of undercover police officers, which you have marked in blue, are not responsive to the instant request because the requestor specifically excluded that information from his request. The city need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 418.176 of the Texas Homeland Security Act, chapter 418 of the Government Code (the "HSA"). Section 418.176 of the Government Code provides, in pertinent part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

...

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a)(3). The fact that information may relate to a governmental body's security concerns or emergency management activities does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information you have indicated consists of the cellular telephone numbers of first responders to emergency situations from the city's police and fire departments and

³We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Marshal's Office. You represent this information is maintained for the purpose of responding to an act of terrorism or related criminal activity, and if the cellular telephone numbers at issue "are released to the public, then the first responders' cell[ular tele]phones could become overwhelmed[,] and they would not be able to receive phone calls to respond to those whose lives are in jeopardy." Based upon your representations and our review, we find the information at issue contains telephone numbers that were collected, assembled, or maintained by or for a governmental entity for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a)(3). Accordingly, the city must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code.⁴

We note the remaining information includes an e-mail address subject to section 552.137 of the Government Code. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).⁵ *Id.* § 552.137(a)-(c). We have marked an e-mail address that is not of the type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to disclosure.⁶

In summary, the city must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 418.176(a)(3) of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to disclosure. 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

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

⁵The 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).

⁶We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 421108

Enc. Submitted documents

c: Requestor
(w/o enclosures)