



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

Ms. Elaine S. Hengen
Senior Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2011-10784

Dear Ms. Hengen:

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# 425057.

The City of El Paso (the "city") received a request for e-mails to and from two named city employees containing specified words or phrases during a specified time period.¹ You claim a portion of the requested information is not subject to the Act. In the alternative, you claim some of this information is excepted from disclosure under section 552.117 of the Government Code. You claim some of the remaining requested information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

¹You provide documentation showing the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request an attorney general ruling is measured from date request is clarified or narrowed).

²We 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.

Initially, you assert the appointment reminder e-mails in Exhibit B are not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

You inform us some of the information in Exhibit B contains personal appointment reminder e-mails that do not relate to the transaction of official city business. We understand these e-mails represent *de minimis* use of city e-mail accounts. Based on your representations and our review, we agree the personal appointment reminder e-mails in Exhibit B do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the city. *See* Gov't Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, this information, which we have marked, is not subject to the Act and need not be released in response to this request.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You inform us the city employee whose information is at issue in Exhibit B chose to not allow public access to her personal information prior to the city's receipt of the request for information. Therefore, the city must withhold the information we have marked in Exhibit B under section 552.117(a)(1) of the Government Code.

Section 552.137 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 at issue do not appear to be a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail addresses you have marked, as well as the e-mail address we have marked, under section 552.137 of the Government Code, unless the owners consent to their release.³

In summary, the city need not release the information we have marked in Exhibit B that is not subject to the Act. The city must withhold the information we have marked in Exhibit B under section 552.117(a)(1) of the Government Code. The city must hold the marked e-mail addresses under section 552.137 of the Government Code unless the 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_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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

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³As you acknowledge, Open Records Decision No. 684 (2009) serves as 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.

Ref: ID# 425057

Enc. Submitted documents

c: Requestor
(w/o enclosures)