



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2011

Mr. Craig D. Caldwell
County Attorney
Cherokee County
P.O. Box 320
Rusk, Texas 75785

OR2011-12942

Dear Mr. Caldwell:

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# 429086.

The Cherokee County Health Department (the "department") received five requests from the same requestor for the following information pertaining to employees of the department's Environmental and Food Services Division (the "division") for the year 2011: (1) the name, sex, salary, title, dates of employment, job application, and resume of each employee; (2) information pertaining to the past work history of each employee; (3) job references and the address, telephone number, and comments written by the reference for each employee; (4) examination scores and performance evaluations for the year 2011 for each employee; and (5) the initial position of a named individual, and all names, addresses, contact information, applications, and resumes of individuals who applied for the position. In reference to the requests seeking information pertaining to division employees, you explain the division has only one employee. Additionally, you state the department does not possess information responsive to the fourth request.¹ We note you have redacted social security numbers under section 552.147 of the Government Code.² You claim that the requests are

¹We note the Act does not require a governmental body to release information that did not exist when it received a request. *See Economic 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).

²Section 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. Gov't Code § 552.147(b).

not requests to the department under the Act. Alternatively, you claim that portions of the submitted information are excepted from disclosure under section 552.1175 of the Government Code. We have considered your arguments and reviewed the submitted information, a portion of which constitutes a representative sample.³ Additionally, we have received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

We begin by addressing your claim that the present requests are not requests to the department under the Act. You contend the requests are requests to obtain information from the Rusk County Health District, and not the department. We note the requests were addressed to the director of the department, and request information pertaining to employees of the Environmental and Food Services Division, which you state is a division within the department. Because the department received the present requests and you have submitted responsive information maintained by the department for our review, we find the present requests were properly made to the department and we will consider the exception you raise.

Next, the requestor asserts he was not timely notified of the department's request for a ruling from this office as required by section 552.301(d) of the Government Code. *See* Gov't Code § 552.301(d) (governmental body must provide requestor with copy of governmental body's written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. We note the department's request for a decision to the office was timely submitted and shows it was copied to the requestor. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Based on the submitted information, we find the department complied with the procedural requirements of section 552.301(d) in copying the requestor on the correspondence requesting this ruling.

Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for the portions of information that the department holds in its capacity as an employer.⁴ Section 552.117(a)(2) of the Government

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code to keep such information confidential. 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)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117(a)(2) protects a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his personal funds. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). You state the individual whose information is at issue in Exhibit 4 is a licensed peace officer. Accordingly, the department must withhold the information we have marked in Exhibit 4 under section 552.117(a)(2) of the Government Code. The department must withhold the marked cellular telephone number of the peace officer only if the officer pays for the cellular telephone service with personal funds. However, we find no portion of the remaining information is information the department holds in its capacity as an employer. Accordingly, the department may not withhold any of the remaining information under section 552.117.

Section 552.1175 of the Government Code applies to information that the department does not hold in an employment context that concerns the following individuals:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;

(8) police officers and inspectors of the United States Federal Protective Service; and

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement.

Act of May 29, 2011, 82nd Leg., R.S., H.B. 1046, § 2 (to be codified as Gov't Code § 552.1175(a)). If the requested information concerns an individual listed in section 552.1175(a), then section 552.1175(b) provides:

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Upon review, we determine the department must withhold the information we have marked in Exhibit 9 under section 552.1175 if the individual to whom the information pertains is an individual described by section 552.1175(a), and she elects to restrict access to her information in accordance with section 552.1175(b). If the individual is not an individual described by section 552.1175(a) or no election is made, the department may not withhold the individual's information under section 552.1175 of the Government Code. We find you have not explained how the remaining information you seek to withhold is personal information for an individual to whom section 552.1175 applies; thus, the department may not withhold any of the remaining information on this basis.

We note Exhibit 9 contains an e-mail address of a member of the public. 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). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail address we have marked under

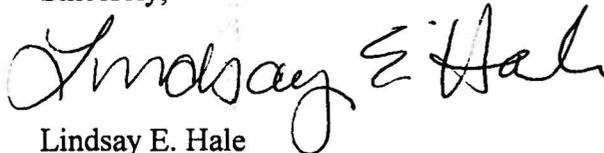
section 552.137 of the Government Code unless the owner of the address has affirmatively consented to its release.⁵

In summary, the department must withhold the information we have marked in Exhibit 4 under section 552.117(a)(2) of the Government Code; however, the department must only withhold the cellular telephone number if the individual pays for the service with personal funds. If the individual whose information we have marked in Exhibit 9 is an individual described by section 552.1175(a) and elects to restrict access to her information, the department must withhold this information under section 552.1175 of the Government Code. The department must withhold the e-mail address we have marked in Exhibit 9 unless the owner has consented to its release. The department 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bs

Ref: ID# 429086

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We 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.