



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2011

Ms. Savita Rai  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 75283

OR2011-13365

Dear Ms. Rai:

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 requests were assigned ID# 430209 (COSA File No. W001993) and ID# 430218 (COSA File No. W002012). We have combined these files and will consider the issues presented in this ruling assigned ID# 430209.

The City of San Antonio (the "city") received two requests from the same requestor for photographs and documentation related to specified incidents, the requestor's application for an excess animal permit, and information maintained by Animal Care Services regarding the requestor, a specified entity, or a specified address. You state some information will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the submitted documentation

indicates the city received the requests for information on June 29, 2011. Accordingly, the fifteen-business-day deadline for the requests fell on July 21, 2011. However, the submitted information bears a post office mark reflecting it was mailed on July 22, 2011. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Therefore, pursuant to section 552.302 of the Government Code, the submitted information is presumed to be public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

The city seeks to withhold portions of the information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because the purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302. The city also raises sections 552.103 and 552.108 of the Government Code, which are discretionary exceptions that protect only a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not constitute compelling reasons to withhold information for purposes of section 552.302. Thus, no portion of the submitted information may be withheld under section 552.101 in conjunction with the informer's privilege or under section 552.103 or 552.108. However, you also raise section 552.137 of the Government Code, and we note portions of the submitted information are excepted by section 552.101 on the basis of common-law privacy and section 552.117. Because these can be compelling reasons to withhold information, we will address their applicability.

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 the common-law right to privacy, which protects

information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked in Exhibit B2 is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the information in Exhibit B2 are subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) 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 that this information be kept confidential under section 552.024. 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). The city may withhold information under section 552.117 only on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile telephones installed in county officials' and employees' private vehicles and intended for official business).

We have marked cellular telephone numbers subject to subsection 552.117(a)(1). If an employee whose information we marked under section 552.117(a)(1) timely elected to keep his or her personal information confidential, and if the employee's cellular service is not paid for by a governmental body, the city must withhold the cellular telephone number we have marked. The city may not withhold this information under section 552.117 if the employee did not make a timely election to keep the information confidential or if a governmental body pays for the cellular service at issue.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). The e-mail addresses we have marked in Exhibit B4 are not of a type specifically excluded by section 552.137(c). You state the owners of the e-mail addresses at issue have not affirmatively consented to release. Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137.<sup>2</sup>

In summary, the city must withhold the information we marked in Exhibit B2 under section 552.101 in conjunction with common-law privacy. The city must withhold the cellular telephone numbers we marked in Exhibit B2 under section 552.117(a)(1) if the employees at issue timely elected to keep their personal information confidential under section 552.024 and if the cellular services are not paid for by a governmental body. The city must withhold the e-mail addresses we marked in Exhibit B4 under section 552.137. The remaining information must be released to the requestor.<sup>3</sup>

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

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<sup>2</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 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.

<sup>3</sup>We note the information being released contains the requestor’s driver’s license number, which is generally confidential with respect to the general public under section 552.130 of the Government Code. However, because this section protects personal privacy, the requestor has a right to her own information under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). The information being released contains the requestor’s e-mail address, to which the requestor has a right of access under section 552.137(b) of the Government Code. *See* Gov’t Code § 552.137(b). As noted, Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including a Texas driver’s license number under section 552.130 and an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision. Thus, should the city receive another request for these same records from a person who would not have a right of access to this requestor’s private information, the city is authorized to withhold this requestor’s driver’s license number and e-mail address without the necessity of requesting another 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 that reads "Misty Haberer Barham". The signature is written in a cursive, flowing style.

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 430209

Enc. Submitted documents

c: Requestor  
(w/o enclosures)