



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2011

Mr. Larry J. Simmons  
Germer Gertz, L.L.P.  
P.O. Box 4915  
Beaumont, Texas 77704

OR2011-15358

Dear Mr. Simmons:

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# 433581.

The City of Jasper (the "city"), which you represent, received a request for information pertaining to the application of a named individual for the position of chief of police. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim 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).

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

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<sup>1</sup>Although you raise section 552.117 for portions of the submitted information, we note section 552.1175 is the proper exception in this instance because the city does not hold the submitted information in an employment capacity.

Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found that information pertaining to the qualifications of an applicant for public employment is generally of legitimate public interest. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 at 2 (1982) (reasons for employee's resignation ordinarily not private). Although references to the previous salaries of an applicant for public employment may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the applicant's employment qualifications and background. *See* Open Records Decision No. 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question").

Upon review, we find the information you have marked is not highly intimate or embarrassing, or it is a matter of legitimate public interest. Therefore, none of the information you have marked is subject to common-law privacy, and it may not be withheld under section 552.101 on that basis.

Section 552.1175(b) of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal], 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, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the peace officer pays for the cellular telephone service with his personal funds. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to

section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The submitted information includes information that pertains to a peace officer who is not a city employee. If this peace officer elects to restrict public access to his personal information, the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the city may only withhold the marked cellular telephone number if the peace officer at issue pays for the cellular telephone service with personal funds. If the peace officer does not elect to restrict public access to his personal information, the city may not withhold the information we have marked under section 552.1175.<sup>2</sup> We note you seek to withhold the work telephone numbers pertaining to individuals who are not employed by the city. However, we note section 552.1175 is not applicable to work telephone numbers, and the city may not withhold that information on the basis of 552.1175.

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)*. Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner consents to its release.

In summary, if the peace officer at issue elects to restrict public access to his personal information, then the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the city may only withhold the marked cellular telephone number if the peace officer at issue pays for the cellular telephone service with personal funds. The city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner consents to its release. 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.

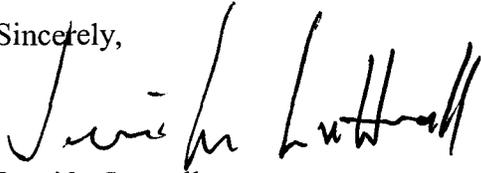
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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, regardless of the applicability of section 552.1175, section 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. *See Gov’t Code § 552.147(b)*.

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, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and "L".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 433581

Enc. Submitted documents

c: Requestor  
(w/o enclosures)