



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Mr. Rob Atherton
City Attorney
City of Nacogdoches
P.O. Drawer 631248
Nacogdoches, Texas 75963-1248

OR2011-17047

Dear Mr. Atherton:

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# 436841.

The City of Nacogdoches (the "city") received a request for fourteen categories of information, including the requestor's personnel file, specified information pertaining to certain employment positions, and specified payroll time sheets from specified periods of time. You state the city has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.117, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although you raise section 552.024 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 is the proper exception to assert. In addition, although you raised section 552.102 of the Government Code as an exception to disclosure in your initial brief to this office, you did not submit to this office written comments stating the reasons why this section would except the submitted information; we therefore assume you no longer assert this exception. *See id.* §§ 552.301, .302.

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.

You raise section 552.117 of the Government Code for portions of Exhibit C-1. 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 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)(1)). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Record Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. You inform us, and provide documentation showing, that the individual listed in Exhibit C-1 is a city employee who elected confidentiality for her home address and telephone number prior to the city's receipt of the request for information. Thus, the city must withhold the home address and telephone number you have marked in Exhibit C-1 under section 552.117(a)(1).

You claim section 552.137 of the Government Code for portions of Exhibit B-1. Section 552.137 states "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 public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). You inform us that the owner of the e-mail address in Exhibit B-1 has not consented to the disclosure of this information. We note this e-mail address is not specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address you have marked in Exhibit B-1 under section 552.137.

Finally, you raise section 552.147 of the Government Code for portions of the remaining information. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, the city may withhold the social security numbers you have marked in Exhibits A-1 and C-1 under section 552.147.³

In summary, the city must withhold the information you marked in Exhibit C-1 under section 552.117(a)(1) of the Government Code. The city must withhold the e-mail address you marked in Exhibit B-1 under section 552.137 of the Government Code. The city may withhold the social security numbers you marked in Exhibits A-1 and C-1 under section 552.147 of the Government Code. The remaining information must be released.

³We note 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. Gov't Code § 552.147(b).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 436841

Enc. Submitted documents

c: Requestor
(w/o enclosures)