



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2011

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

OR2011-17184

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# 436626.

The City of Nacogdoches (the "city") received a request for names and addresses of retired city employees. A second request from a different requestor additionally seeks telephone numbers of retired city employees. You state the city has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code and protected under rule 12 of the Rules of Judicial Administration.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, we note this section is not an exception to public disclosure under the Act. Rather, section 552.024 permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 1 (to be codified as an amendment to Gov't Code § 552.024(a)). Further, 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 information the city holds in its capacity as an employer. Accordingly, we do not address your argument under section 552.1175.

<sup>2</sup>We 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, we note the requestors seek only the names, addresses, and telephone numbers of city retirees. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the names, addresses, and telephone numbers of city retirees are not responsive to the present requests. This ruling does not address the public availability of any information that is not responsive to the requests and the city is not required to release that information in response to the requests.

Next, you argue a portion of the responsive information is exempt from disclosure under rule 12.5(d) of the Rules of Judicial Administration. Rule 12 governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov't Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a "judicial record" as "a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]" TEX. R. JUD. ADMIN. 12.2(d). In this instance, the submitted information consists of information held by the city. Because this information was created and is maintained by the city, it does not constitute a judicial record subject to the Rules of Judicial Administration and instead is information subject to the Act. *Id.*; Gov't Code §§ 552.002(a), .003(1)(A)(iii). Rule 12 does not apply to records or information to which access is controlled by the Act. TEX. R. JUD. ADMIN. 12.3(a)(4). Therefore, as the submitted information is subject to the Act, it may only be withheld if it is excepted from disclosure under an exception in the Act.

Next, you state some of the responsive information was inadvertently released to the public. We note the Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential by law. In this instance, you contend the submitted information is confidential by law and must be withheld under sections 552.101, 552.102, and 552.117 of the Government Code. These exceptions prohibit release of information or make information confidential. Accordingly, we will consider your arguments under these exceptions.

We first address your argument under section 552.117 of the Government Code, as it is potentially the most encompassing. Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 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)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). Accordingly, to the extent the submitted information consists of the home address or home telephone number of a former police officer of the city's police department who is currently a licensed peace officer as defined by article 2.12, that information must be withheld under section 552.117(a)(2) of the Government Code. However, to the extent the former police officers at issue are not currently licensed peace officers as defined by article 2.12, their personal information may not be withheld under section 552.117(a)(2) of the Government Code. In that instance, we will consider the applicability of section 552.117(a)(1) of the Government Code to the information at issue, as well as to the remaining responsive information.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests 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 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 the information. *See* Open Records 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 the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. As noted above, a post office box number is not a "home address" for purposes of section 552.117(a). *See* ORD 622 at 4. Therefore, to the extent the former employees at issue timely requested confidentiality under section 552.024, the city must withhold their home addresses and telephone numbers under section 552.117(a)(1). Conversely, to the extent the former employees at issue did not timely request confidentiality under section 552.024, the city may not withhold their home addresses and telephone numbers under section 552.117(a)(1). In that instance, we will consider your remaining arguments against release of the information at issue.

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 information made confidential by statute. You assert some of the remaining responsive information is excepted from disclosure under

section 552.101 in conjunction with section 855.115 of the Government Code.<sup>3</sup> Section 855.115(a) protects “[i]nformation contained in records that are in the custody of the [Texas Municipal Retirement System.]” *Id.* § 855.115(a). In this instance, the marked information is held by the city rather than the Texas Municipal Retirement System. Therefore, we find no portion of the information at issue is confidential under section 855.115 of the Government Code, and the city may not withhold the information under section 552.101 on that basis.

You next argue the remaining responsive information is excepted by section 552.102 of the Government Code. Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). Having carefully reviewed the information at issue, we find no portion of the remaining responsive information may be withheld under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” *Id.* § 552.102(b). We note the remaining responsive information does not contain a transcript from an institution of higher education maintained in the personnel file of a professional public school employee. Accordingly, no portion of the remaining responsive information may be withheld under section 552.102(b).

In summary, to the extent the submitted information consists of the home address or home telephone number of a former police officer of the city’s police department who is currently a licensed peace officer as defined by article 2.12, that information must be withheld under section 552.117(a)(2) of the Government Code. To the extent the former employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold their home addresses and telephone numbers under section 552.117(a)(1) of the Government Code. The remaining responsive 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>3</sup>Although you argue the information at issue is confidential pursuant to section 855.155 of the Government Code, we note there is no such section. Thus, we will address your argument under section 855.115, as this is the correct section for the substance of your argument.

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 cursive script, appearing to read "Claire Morris Sloan".

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 436626

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)