



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2012

Ms. Amy Arnold  
City Secretary  
City of White Settlement  
214 Meadow Park Drive  
White Settlement, Texas 76108

OR2012-00867

Dear Ms. Arnold:

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# 442868.

The City of White Settlement (the "city") received a request for "all resident applications for Board or Commissions of the City of White Settlement, specifically, for all recent (Oct. 11, 2011) appointments." You ask this office to determine whether portions of the submitted information are exempted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>1</sup> We have reviewed the submitted information. We have also considered comments submitted by 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 obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code

---

<sup>1</sup>We note you raised sections 552.101 and 552.102 of the Local Government Code, however, these sections are not exceptions to disclosure of information. Thus, we understand you to raise sections 552.101 and 552.102 of the Government Code.

§ 552.301(e)(1)(A)-(D). You state the city received the request for information on October 17, 2011. Accordingly, the city's fifteen-business-day deadline to submit (1) general written comments stating the reasons why the stated exceptions apply and (2) a copy of the written request for information was November 7, 2011. However, the city did not submit to this office general written comments stating the reasons why the stated exceptions apply, and a copy of the written request for information was not received by this office from the city until November 16, 2011, by facsimile transmission. Consequently, we find the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *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); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). We will therefore consider whether any of the submitted information is confidential.

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. Section 552.101 encompasses the doctrine of common-law 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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, this information must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information.<sup>2</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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. Gov't Code § 552.117(a). Additionally,

---

<sup>2</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether 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). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials and employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those officials and employees who timely elected to keep their personal information confidential, the city must withhold the officials' and employees' personal information we have marked under section 552.117(a)(1). However, the city may only withhold the marked cellular telephone numbers under section 552.117(a)(1) if the officials or employees whose information is at issue pay for the cellular telephone service with personal funds. The city may not withhold this information under section 552.117(a)(1) for those officials and employees who did not make a timely election to keep the information confidential.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.<sup>3</sup> Gov't Code § 552.130(a)(1). Therefore, the city must withhold the information we have marked under section 552.130.

Finally, we note the submitted information contains personal e-mail addresses.<sup>4</sup> 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 are not specifically excluded by section 552.137(c). As such, these marked e-mail addresses must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release.<sup>5</sup> *See id.* § 552.137(b).

---

<sup>3</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. For those officials and employees who timely elected to keep their personal information confidential, the city must withhold their personal information, which we have marked, under section 552.117(a)(1). However, the city may only withhold the marked cellular telephone numbers under section 552.117(a)(1) if the officials or employees whose information is at issue pay for the cellular telephone service with personal funds. The city must withhold the information we have marked under section 552.130. The city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their 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 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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 442868

Enc. Submitted documents

c: Requestor  
(w/o enclosures)