



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-05110

Dear Ms. Evans:

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# 450132 (GC No. 19284).

The City of Houston (the "city") received a request for a listing of employees for the fourth quarter of 2011. You claim portions of the submitted information are excepted from disclosure under sections 552.102 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.2d 336, 342 (Tex. 2010). Upon review, we find the city must

¹Although you raise section 552.1175 of the Government Code for some of the submitted information at issue, section 552.117 is the proper exception for information that the city holds in its capacity as an employer.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

withhold the dates of birth of public employees, a representative sample of which we have marked, under section 552.102(a) of the Government Code.

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). 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). You inform us the employees whose addresses are at issue timely elected confidentiality under section 552.024. Accordingly, the city must withhold the addresses at issue, a representative sample of which we have marked, pursuant to section 552.117(a)(1) of the Government Code.

You inform us some of the submitted information belongs to police officers employed by the city's police department. Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, family member information, and emergency contact information, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see also id.* § 552.024. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find the city must withhold the officers' addresses under section 552.117(a)(2) of the Government Code.

We note the remaining information includes e-mail addresses belonging to members of the public. 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).³ *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue, which we have marked, are not specifically excluded by section 552.137(c). As such, the city must withhold the e-mail addresses at issue, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.⁴ *See id.* § 552.137(b).

In summary, the city must withhold: (1) employee dates of birth, a representative sample of which we have marked, under section 552.102(a) of the Government Code; (2) employee

³The 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).

⁴We note this office issued Open Records Decision No. 684 (2009), 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.

addresses, a representative sample of which we have marked, under section 552.117(a)(1) of the Government Code; (3) the addresses belonging to licensed peace officers under section 552.117(a)(2); and (4) to the extent the owners do not affirmatively consent to release, the personal e-mail addresses, a representative sample of which we have marked, under section 552.137 of the Government Code. The city must release the remaining information at issue.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 450132

Enc. Submitted documents

c: Requestor
(w/o enclosures)

