



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-06392

Dear Ms. Graham:

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# 452346.

The City of Mesquite (the "city") received a request for nine categories of information pertaining to a named city council member: (1) information pertaining to any official travel by the named council member for a specified time period; (2) communications between the named council member and any city employees or members of the board for a specified time period; (3) communications or requests between the city and a named company or a specified family trust for a specified time period; (4) all code enforcement records concerning the named council member or any property owned by the named council member, the named company, or the named family trust for a specified time period; (5) copies of all requests for information made by the named council member concerning the city's operations; (6) all inquiries made by the named council member to any member of the city's administration for a specified time period; (7) copies of any text messages between the named council member and any city employee concerning the city's official business, unofficial business, or operations for a specified time period; (8) information pertaining to the water/sewer accounts in any of eight named individuals or a named family trust for a specified time period; and (9) copies of all open records requests made by the named council member for a specified time

period.¹ You state the city does not maintain or possess any text messages responsive to item seven of the request for information.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117,³ 552.130, 552.136, 552.137, and 552.147 of the Government Code.⁴ We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note you have not submitted any information responsive to items three, five, or nine of the request for information. You state you have submitted a representative sample of information; however, no portion of the submitted representative sample pertains to the requested communications or requests between the city and a named company for a specified family trust, copies of requests for information made by the named council member concerning the city's operations, or copies of all open records requests made by the named council member for a specified time period. Thus, we find the submitted information is not representative of all the information sought in the request for information. Please be advised this ruling applies to only the types of information you have submitted for our review. Therefore, this ruling 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed public). To the extent any information responsive to items three, five, or nine of the request existed and were maintained by the city on the date the city received the request for information, we assume the city has released it. If the city has not released any such

¹You state the requestor narrowed his request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that 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 information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Additionally, although you also raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception for information the city holds in an employment capacity.

⁴We note the city did not raise sections 552.136 or 552.137 of the Government Code as exceptions to disclosure within ten business days of the date the city received the request. *See* Gov't Code §§ 552.301(b), .302. However, because sections 552.136 and 552.137 are mandatory exceptions that can provide compelling reasons to withhold information from disclosure, we will consider your claims under these exceptions, notwithstanding the city's violation of section 552.301(b) in raising these exceptions. *See id.* § 552.302.

information, it must do so at this time. *See id.* §§ 552.301-302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible).

Next, we note you have submitted the named city council member's completed public access option form. This information is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

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 other statutes, such as section 182.052 of the Utilities Code, which provides, in relevant part:

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). Water service is included in the scope of utility services covered by section 182.052. *Id.* § 182.051(3). "Personal information" under section 182.052(a) includes an individual's address, telephone number, and social security number, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. Util. Code § 182.054.

You state some of the information in Exhibits 4 and 5 consists of personal and other information of a customer of a government-operated utility. You state the individual whose information is at issue in Exhibit 4 requested confidentiality under section 182.052(b) for his personal information. We understand none of the exceptions listed in section 182.054 are applicable to the information at issue in Exhibit 4. Accordingly, the city must withhold the personal information we have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code. Upon review, we find none

of the remaining information in Exhibit 4 constitutes personal information or information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage. Additionally, although you seek to withhold the information in Exhibit 5 under section 552.101 on this basis, the information in Exhibit 5 consists of city code violation information, and is not personal information in a customer's account record or information relating to the volume or units of utility usage or the amounts billed to or collected from an individual for utility usage. Accordingly, the city may not withhold any of the remaining information in Exhibit 4 or any of the information in Exhibit 5 under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code.

Section 552.101 of the Government Code also encompasses the common-law right of 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. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked in Exhibit 3 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate that any of the information you have marked in Exhibit 3 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the information you have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117(a)(2) protects a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his personal funds. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not

applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). You have marked the cellular telephone number of a peace officer in Exhibit 6. Accordingly, if the individual whose information you have marked is still a licensed peace officer and pays for the cellular telephone service with personal funds, the city must withhold this marked information under section 552.117(a)(2) of the Government Code.⁵

If the individual concerned is no longer a licensed peace officer, the marked information may be protected by section 552.117(a)(1) of the Government Code. 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 that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of 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, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual whose information is at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note that section 552.117 does not protect from disclosure information that concerns an individual who is a volunteer for the city and is not a current or former city official or employee. You have marked information pertaining to several individuals, including an individual who is a volunteer for the city and employed by a school district. Therefore, the city may not withhold this individual's information in Exhibit 6 under section 552.117. If the current or former city officials and employees whose information we have marked timely requested confidentiality pursuant to section 552.024, the information we have marked under section 552.117 in Exhibits 6 and 9 must be withheld under section 552.117(a)(1), including the personal cellular telephone number if the individual pays for the cellular telephone service with his personal funds. The city may not withhold the marked information under section 552.117 if the individuals did not make timely elections to keep their information confidential.

In the event the individual whose social security number is at issue did not timely request confidentiality pursuant to section 552.024 of the Government Code, you have marked this information under section 552.147 of the Government Code. Section 552.147 excepts from disclosure the social security number of a living person. Gov't Code § 552.147. Upon

⁵We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

review, we find the city may withhold the social security number you have marked under section 552.147 of the Government Code.⁶

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We find the city must withhold the information you have marked in Exhibits 4 and 7 under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Upon review, we find the city must withhold the partial credit card numbers you marked in Exhibits 6 and 8 under section 552.136 of the Government Code.

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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The marked e-mail addresses are not of the types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses you have marked in Exhibit 9, as well as the additional e-mail addresses we have marked in the remaining responsive information, under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.⁷

In summary, the city: (1) must withhold the personal information we have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code; (2) must withhold the information we have marked in Exhibit 3 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold the information you have marked under

⁶We 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).

⁷We 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 an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.117(a)(2) of the Government Code if the individual whose information is at issue is still a licensed peace officer and if the individual pays for the cellular telephone service with personal funds; (4) must withhold the information we have marked in Exhibits 6 and 9 under section 552.117(a)(1) of the Government Code if the individuals timely requested confidentiality pursuant to section 552.024 and if the individual pays for the cellular telephone service with his personal funds; (5) may withhold the social security number you have marked under section 552.147 of the Government Code; (6) must withhold the information you have marked in Exhibits 4 and 7 under section 552.130 of the Government Code; (7) must withhold the partial credit card numbers you have marked in Exhibits 6 and 8 under section 552.136 of the Government Code; and (8) must withhold the e-mail addresses you have marked in Exhibit 9 and the additional 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 city must release the remaining responsive information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 452346

Enc. Submitted documents

c: Requestor
(w/o enclosures)