



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2012

Ms. Donna L. Johnson
For Harris County
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2012-12032

Dear Ms. Johnson:

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# 460576 (C.A. File No. 12PIA0153).

The Harris County Attorney's Office (the "county attorney's office"), which you represent, received a request for information related to investigations performed by a named employee during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered your submitted arguments and reviewed the submitted representative sample of information.² We have also received and considered comments from an attorney for the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).*

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we must address the county attorney's office's procedural obligations under section 552.301 of the Government Code. 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), the governmental body is required to submit to this office within fifteen business days of receiving the 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. *See id.* § 552.301(e). We note the county attorney's office received the original request for information on March 9, 2012 and sought a ruling from our office on March 23, 2012. Thus, your fifteen-business-day deadline under section 552.301(e) was March 30, 2012. *See id.* § 552.301(e). In response to this request for a ruling, this office issued Open Records Letter No. 2012-08190 (2012). However, on May 15, 2012 you submitted additional documents responsive to the original request for information and informed our office that "documents have been located that have not previously been submitted." Thus, with respect to the information submitted on May 15, 2012, we find the county attorney's office failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the county attorney's office seeks to withhold the information at issue under sections 552.107, 552.108, and 552.111 of the Government Code and Texas Rule of Evidence 503, these provisions are discretionary in nature and do not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision Nos. 677 at 10 (2002) (section 552.111 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the county attorney's office failed to comply with the procedural requirements of the Act with respect to the information submitted on May 15, 2012, the county attorney's office has waived its claims under sections 552.107, 552.108, and 552.111 of the Government Code and rule 503, and none of the information at issue may be withheld on the basis of these provisions. We note, however,

that portions of the submitted information may be subject to sections 552.102, 552.117, and 552.137 of the Government Code.³ Because these sections can provide compelling reasons to withhold information, we will consider their applicability to the submitted information.

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.3d 336 (Tex. 2010). Upon review, we find the county attorney’s office must withhold birth dates 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). We further note section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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). The county attorney’s office may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 and if the cellular services at issue are not paid for by a governmental body, the county attorney’s office must withhold the information we have marked under section 552.117(a)(1). Conversely, if either the individuals at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the marked cellular telephone service, the county attorney’s office may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Finally, we note the information at issue contains personal e-mail addresses. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

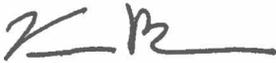
member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail addresses listed in the information at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release.⁴ See *id.* § 552.137(b).

In summary, the county attorney's office must withhold the birth dates we have marked under section 552.102(a) of the Government Code. If the individuals whose information is at issue timely requested confidentiality and if the cellular services at issue are not paid for by a governmental body, the county attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The county attorney's office must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

⁴We note Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold certain 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.

Ref: ID# 460576

Enc. Submitted documents

c: Requestor
(w/o enclosures)