



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2012

Mr. Ignacio Perez  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2012-12082

Dear Mr. Perez:

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# 460813 (McAllen Ref. No. W007755-051512).

The City of McAllen (the "city") received a request for a specified communication. You claim the submitted information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.131 of the Government Code provides in relevant part:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(b). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. You assert the submitted information pertains to a proposal of economic development and consists of negotiations with a business prospect. You state no agreement has been reached with the business prospect. Upon review, we agree portions of the submitted information consist of financial incentives being offered to a business prospect by

the city. Accordingly, the city must withhold the information we have marked under section 552.131(b) of the Government Code. However, you have not demonstrated how the remaining information consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the remaining information may be withheld under section 552.131(b).

We note the remaining information includes a cellular telephone number that may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, 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. *See id.* §§ 552.024, .117. Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only 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. Therefore, if the individual whose cellular telephone number we have marked timely requested confidentiality under section 552.024 and pays for the cellular telephone service with his own funds, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. If the individual whose information is at issue did not make a timely election under section 552.024 or does not pay for the cellular telephone service with his own funds, the city may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

In summary, the city must withhold the information we have marked under section 552.131(b) of the Government Code. If the individual whose cellular telephone number we have marked timely requested confidentiality under section 552.024 and pays for the cellular telephone service with his own funds, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. If the individual whose information is at issue did not make a timely election under section 552.024 or does not pay for the cellular telephone service with his own funds, the city may not withhold the

---

<sup>1</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)*.

information at issue under section 552.117(a)(1) of the Government Code. 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a stylized flourish at the end.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 460813

Enc. Submitted documents

c: Requestor  
(w/o enclosures)