



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2012

Mr. Steven M. Kean  
Deputy City Attorney  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710

OR2012-14662

Dear Mr. Kean:

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# 465319 (Tyler LegalDesk Nos. QSW-967974 and JCR-217835).

The City of Tyler (the "city") received a written request for copies of all alcohol petitions filed with the city. The city also received a verbal request for the same information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we address the verbal request for information the city received on July 2, 2012. Section 552.301(a) of the Government Code provides the following:

A governmental body that receives a *written* request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the

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<sup>1</sup>Although you do not explicitly raise section 552.101 of the Government Code in your brief, based on your arguments we understand you to raise section 552.101. We also note that although you raise section 552.024 of the Government Code, 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.

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

attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

Gov't Code § 552.301(a) (emphasis added). The duty to request a decision from this office as to whether information may properly be withheld under the Act does not arise until the governmental body receives a written request for the information. *See id.* Consequently, the verbal request the city received on July 2, 2012, did not trigger the requirements of section 552.301 of the Government Code. Therefore, this office has no jurisdiction to rule on whether the submitted information is subject to disclosure to the verbal requestor under the Act. However, we do address the city's arguments against disclosure as they pertain to the written request received June 26, 2012.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the constitutional right to privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fadlo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); *see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure information that relates to the home address, home telephone number, emergency contact information, social security number of an employee or official of a governmental body, as well as information that reveals whether the person has family members. Gov't Code § 552.117(a)(1). Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 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. We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information consists of a petition for a local option election and is not held by the city as an employer.

Therefore, we find section 552.117(a) of the Government Code does not apply in this situation, and the city may not withhold any portion of the information you have marked on that basis.

Section 552.1175 of the Government Code excepts from public disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of specified categories of governmental body employees or officials, including peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See id.* § 552.1175(a)-(b). You assert the submitted information may contain the home addresses of peace officers. However, we are unable to determine from the information provided which, if any, of the individuals at issue are currently licensed peace officers. Thus, we must rule conditionally. Accordingly, to the extent the home addresses listed in the submitted petitions belong to individuals who are currently licensed as peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the city must withhold the addresses belonging to those individuals under section 552.1175 of the Government Code. Conversely, if the individuals whose addresses are listed in the submitted petitions are not currently licensed as peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the addresses at issue may not be withheld under section 552.1175. In either case, as no further exceptions to disclosure were raised, the city must release the remaining submitted 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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 465319

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)