



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2012

Ms. Michelle M. Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2012-16691

Dear Ms. Kretz:

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# 469747 (City of Fort Worth PIR No. W019297).

The City of Fort Worth (the "city") received a request for information pertaining to a named city employee's qualifications, his promotion, and information relating to the selection of the named employee for a specified position. You state the city does not possess some information requested.<sup>1</sup> You also state the city has released some information to the requestor. Additionally, you state the city has marked a social security number for redaction under section 552.147(b) of the Government Code.<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed 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 has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without requesting a decision. Gov't Code § 552.147(b).

database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). We conclude the city must withhold the information you have marked under section 552.102(a) of the Government Code.

You state the city will redact information pursuant to Open Records Decision No. 670 (2001), which authorizes governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code. ORD 670. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Gov't Code § 552.117(a)(2). In this instance, the employee whose information you seek to withhold is not a peace officer. Accordingly, the information you have marked may not be withheld pursuant to Open Records Decision No. 670. Section 552.117(a)(1) of the Government Code 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. *Id.* § 552.117(a)(1). Section 552.117(a)(1) is also applicable to personal 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(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(a)(1) on behalf of current or former employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have marked information the city seeks to withhold under section 552.117. We find some of the marked information does not fall within the scope of the exception. We have marked that information, which must be released. If the employee whose information is at issue timely elected to keep his information confidential pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body, the city must withhold the remaining information you have marked, and the information we have marked, under section 552.117(a)(1). The city may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to keep this information confidential or if the cellular telephone service is paid for by a governmental body.

You also state the city will redact information pursuant to section 552.130(c) of the Government Code, which authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c). Section 552.130(a)(1) excepts from disclosure information related to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1). We note, however, the issuing state of a driver's license is not motor vehicle record information for purposes of

section 552.130. We have marked that information, which the city may not withhold pursuant to section 552.130(c). This marked information must be released. We conclude, however, the city must withhold the remaining information you have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.102(a) of the Government Code. Except for the information we have marked for release, the city must withhold the marked information under section 552.117(a)(1) of the Government Code if the employee whose information is at issue made a timely election and the cellular telephone service is not paid for by a governmental body. Except for the information we have marked for release, the city must withhold the information you have marked under section 552.130 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 469747

Enc. Submitted documents

c: Requestor  
(w/o enclosures)