



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-16952

Dear Mr. Brown:

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# 468669.

The City of El Paso (the "city") received a request for eight specified categories of information pertaining to the city's use of automatic license plate readers ("ALPR"), which include "[a]ll records regarding obtaining ALPR data from third parties, including which databases [the city] agency can access." You state the city does not have some of the requested information.¹ You also state the city has released some of the information at issue but claim the submitted information is excepted from disclosure under section 552.139 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.139 of the Government Code provides in relevant part the following:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(b) The following information is confidential:

- (1) a computer network vulnerability report; and
- (2) any other assessment of the extent to which data processing operations, a computer, [or] a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use.

Id. § 552.139(a)-(b). You assert the submitted information is excepted from disclosure under section 552.139 because it is "related to security issues for computers" and the city's IT Department has informed the city attorney's office that release of the requested information "could lead to hacking applications on the [c]ity's internal network." Based on your representations and our review, we find you have demonstrated some of the submitted information relates to computer network security, the design, operation, or defense of the city's computer network, or an assessment of the city's computer network vulnerabilities. Accordingly, the city must withhold this information, which we have marked, under section 552.139 of the Government Code. However, we conclude you have failed to demonstrate any of the remaining information relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). *See id.* § 2059.055 (defining confidential network information for purposes of section 2059.055). Further, we find you have failed to demonstrate this information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Therefore, the city may not withhold the remaining information under section 552.139.

We note section 552.117 of the Government Code is applicable to some of the submitted information.² Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

³"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Government Code section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The city must withhold the information pertaining to city police officers we have marked under section 552.117(a)(2). However, the city may only withhold under section 552.117(a)(2) the marked cellular telephone numbers if they were not provided to the officers at issue at public expense. *See* Open Records Decision No. 670 at 6 (2001).

Some of the remaining information pertains to city employees who do not appear to be peace officers. Thus, section 552.117(a)(1) of the Government Code may be applicable to this information. Section 552.117(a)(1) makes confidential the same types of information covered by section 552.117(a)(2) but for current and former employees of governmental bodies who timely request that this information be kept confidential under section 552.024. 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, the city may withhold information under section 552.117(a)(1) on behalf of the employees at issue only if they made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Provided the employees timely elected to keep their personal information confidential, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the employees did not make a timely election to keep the information confidential. In addition, the city may only withhold under section 552.117(a)(1) the marked cellular telephone numbers if they were not provided to the employees at issue at public expense. *See* ORD 670 at 6 (2001).

The submitted information also contains e-mail addresses of members of the public. 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). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137.⁴

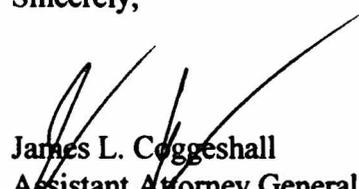
⁴This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

To conclude, the city must withhold the information we have marked under section 552.139 of the Government Code. The city must withhold the information pertaining to city police officers we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers at issue if they were not provided to the officers at issue at public expense. The city must also withhold the information pertaining to other city employees we have marked under section 552.117(a)(1) of the Government Code if the employees at issue timely elected to withhold that information; however, the city may only withhold the marked cellular telephone numbers at issue if they were not provided to the employees at issue at public expense. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The city must release the remaining 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 468669

Enc. Submitted documents

c: Requestor
(w/o enclosures)