

December 17, 2012

Ms. Laurie Taylor
Open Records
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR2012-20284

Dear Ms. Taylor:

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# 475162.

The Texas Commission on Fire Protection (the "commission") received a request for four categories of information pertaining to a named individual and his qualifications to serve as a paid fire chief. You state the commission has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.117, 552.1175, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(1) of the Government Code excepts 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. Gov't Code § 552.117(a). 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. We note section 552.117

encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5–7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, if the individuals whose cellular telephone numbers we have marked timely requested confidentiality under section 552.024, the commission must withhold their information under section 552.117(a)(1) of the Government Code if the cellular service is not paid for by a governmental body. If the individuals at issue did not make a timely election under section 552.024, the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we conclude the commission must withhold the information we have marked under section 552.1175 if the individuals to whom the information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b). However, the commission may withhold the cellular telephone numbers we have marked only if the cellular telephone service is not paid for by a governmental body. If the individuals are no longer licensed peace officers or no election is made, the commission may not withhold the individuals' information under section 552.1175 of the Government Code.

Section 552.136 of the Government Code provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to 1) obtain money, goods, services, or another thing of value, or 2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). This office has determined bank account and routing numbers are access device numbers for purposes of section 552.136 of the Government Code. The commission must withhold the information we have marked under section 552.136 of the Government Code.

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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be a type specifically excluded by section 552.137(c). Accordingly, the commission must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the e-mail addresses consent to their release.

In summary, if the individuals whose cellular telephone numbers we have marked timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold their information under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The commission must withhold the information we have marked under section 552.1175 of the Government Code if the individuals to whom the information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code; however, the commission may withhold the cellular telephone numbers only if the cellular telephone service is not paid for by a governmental body. The commission must withhold the information we have marked under section 552.136 of the Government Code. The commission must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the e-mail addresses consent to their release. The commission 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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 475162

Enc. Submitted documents

c: Requestor
(w/o enclosures)