



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2013

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
424 South Castell
New Braunfels, Texas 78130

OR2013-03983

Dear Ms. Richard:

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# 480827.

The City of New Braunfels (the "city") received the three following requests for information: (1) one request received on December 11, 2012, for the ten bid proposals submitted for RFP 13-001, the scores of the proposals, a list of the committee members selected to review the submitted proposals, and those members' qualifications; (2) one request from a different requestor received on December 11, 2012, for the bid proposals submitted for RFP 13-001 by four named companies; and (3) one request from the second requestor received on December 14, 2012, for the detailed scoring results for RFP 13-001 for a named company, any complaints or material the city has on file against the named company used during the scoring process for RFP 13-001, correspondence related to RFP 13-001 sent to or received by the city's purchasing manager or city attorneys during a specified time period, names and titles of all individuals on the panel who scored the proposals for RFP 13-001, and any audio or video recordings that took place during the scoring process. You state you are releasing some of the submitted information, which you have indicated by markings. You claim the remaining submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. You also state release of some of the submitted information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the city notified the third parties of the request for information and of their right to submit arguments stating why their

information should not be released.¹ *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments from attorneys for Bluebonnet, Hill Country, NBT, and NBWS. We have considered the submitted arguments and reviewed the submitted information, a portion of which you state constitutes a representative sample.² We have also received and considered comments submitted by the requestor who submitted the second and third requests for information. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the second request seeks only the bid proposals submitted by four named companies. Thus, any information other than the bid proposals submitted by the four companies named in the second request is not responsive to the second request. Additionally, we note the third request seeks only the detailed scoring results for another named company. As such, the detailed scoring results you submitted in response to the third request for companies other than the company named in the third request are not responsive to the third request. Accordingly, the city need not release information for the second and third requests, which were each made by the same requestor, that is not responsive to his requests, and this ruling will not address the public availability of the non-responsive information with respect to the second and third requests.

Next, we note, with respect to the first request, you did not submit a list of the committee members selected to review the submitted proposals and those members' qualifications. Additionally, with respect to the third request, you did not submit any complaints or material the city has on file against a named company used during the scoring process for RFP 13-001, names and titles of all individuals on the panel who scored the proposals for RFP 13-001, or any audio or video recordings that took place during the scoring process. Thus, to the extent such information existed and was maintained by the city on the date the city received the requests for information at issue, we presume the city has released it. If not, the city must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision

¹The third parties notified pursuant to section 552.305 are: Bluebonnet Motors ("Bluebonnet"); Comal Towing; City Wide Towing L.L.C.; Fat Boy Towing d/b/a FBT Storage, L.L.C.; Flugrath Towing; Hill Country Customs d/b/a Hill Country Customs Towing ("Hill Country"); Incident Management of Texas LLC d/b/a Tow King of Waco; New Braunfels Towing ("NBT"); and New Braunfels Wrecker Service ("NBWS").

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Hill Country seeks to withhold information the city did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

We next address the arguments under section 552.103 of the Government Code, as it is potentially the most encompassing exception raised. Hill Country, NBT, and NBWS each raise section 552.103. Section 552.103, however, protects a governmental body's position in litigation, not the litigation interests of private companies. *See* Open Records Decision No. 551 at 4-5 (1990). Thus, section 552.103 may only be raised by a governmental body. Because the city raises section 552.103, we will consider the city's argument under this exception. Section 552.103 provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* ORD 551 at 4.

To demonstrate that litigation is reasonably anticipated, the governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.³ Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

In this instance, you state the city reasonably anticipated litigation because, during public hearings before the city received any of the present requests for information, “[t]here was much vocal opposition” and “[t]he word ‘lawsuit’ was brought up a few times[.]” You explain the opposition pertained to the city’s repeal of existing incident management tow regulations in favor of using a competitive towing process, under which process the city received the RFP bid proposals at issue and awarded contracts on December 10, 2012. You further state the city’s attorney was notified by an attorney on December 13, 2012 that the first requestor hired the attorney to sue the city, challenging the proposal process and resulting contract awards. As previously noted, the first two requests for information were received on December 11, 2012. You do not inform our office that, prior to the city’s receipt of the first two requests on December 11, 2012, anyone had taken any concrete steps toward the initiation of litigation regarding this matter. Consequently, we find you have failed to demonstrate litigation was reasonably anticipated when the city received the first two requests for information. *See* Gov’t Code § 552.103(c) (litigation must be pending or reasonably anticipated at the time the governmental body receives the request for information). As such, none of the information you have submitted as responsive to the first two requests may be withheld under section 552.103. Additionally, upon review of the information you have submitted as responsive to the third request and for which you raise section 552.103, we find this information is also responsive to the first request. Therefore, the city may not withhold any of the responsive information under section 552.103.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See id.*

³In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

§ 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only Bluebonnet, Hill Country, NBT, and NBWS explaining why their information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate the interests of any of the remaining third parties. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude the city may not withhold any of the responsive information on the basis of any interest the remaining third parties may have in the information.

NBT and NBWS each raise section 552.101 of the Government Code for some of their information. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, neither NBT nor NBWS have pointed to any statutory confidentiality provision, nor are we aware of any, that would make any of their information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the responsive information under section 552.101 of the Government Code.

Section 552.101 of the Government Code encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4, 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions relating to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); 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); 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” and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d

at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

Hill Country asserts some of its information is protected under constitutional and common-law privacy. Upon review, we find Hill Country has not demonstrated any of the information at issue falls within the zones of privacy or otherwise implicates an individual's privacy interests for the purposes of constitutional privacy. We also find Hill Country has not demonstrated the information at issue is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the city may not withhold any of the information at issue under section 552.101 in conjunction with constitutional or common-law privacy.

NBT and NBWS claim some of their information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) 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). However, section 552.102 applies to only information in the personnel file of a governmental employee. *See id.* Therefore, we find section 552.102 is not applicable and the city may not withhold any of the information at issue on that basis.

Hill Country, NBT, and NBWS each raise section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). This exception protects the competitive interests of governmental bodies, such as the city, not the proprietary interests of private parties. In this instance, the city does not raise section 552.104 as an exception to disclosure. Therefore, the city may not withhold any of the responsive information under section 552.104.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *Id.* § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney

acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies to only communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies to only a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you have marked constitutes communications between city attorneys, members of the city’s police department, the city’s purchasing manager, and other city staff that were made for the purpose of providing legal services to the city. You state the communications were intended to be confidential and have remained confidential. Based upon these representations and our review, we conclude the information you have marked may be withheld under section 552.107(1).

Section 552.110 of the Government Code protects (1) trade secrets and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov’t Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one’s business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving

materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (citation omitted); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret, as well as the Restatement's list of six trade secret factors.⁴ *See* RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); ORD 661 at 5-6 (business

⁴There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (2) the extent to which it is known by employees and others involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Bluebonnet, Hill Country, NBT, and NBWS claim their information, including Hill Country's pricing information and NBT's and NBWS's customer information, constitutes trade secrets. We note pricing information pertaining to a particular proposal or contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776. Upon review, we find NBT and NBWS have each established a *prima facie* case that some of their customer information constitutes trade secrets. Accordingly, the city must withhold the information we have marked under section 552.110(a). We note, however, that NBT published the identity of one of its customers on its website, thereby making this information publically available. Because NBT has published this information, it has failed to demonstrate this information is a trade secret, and none of it may be withheld under section 552.110(a). We find NBT and NBWS have failed to demonstrate any of their remaining information meets the definition of a trade secret. Additionally, we find Bluebonnet and Hill Country have failed to demonstrate any of their information meets the definition of a trade secret. Furthermore, none of these parties demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the city may not withhold NBT's or NBWS's remaining information, or any of Bluebonnet's or Hill Country's information, under section 552.110(a).

Bluebonnet, Hill Country, NBT, and NBWS also contend their information is commercial or financial information, release of which would cause substantial competitive harm to the companies. Upon review, we find Bluebonnet, Hill Country, NBT, and NBWS have not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their information at issue would cause the companies substantial competitive harm. *See* Open Records Decision Nos. 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). As previously noted, NBT published the identity of one of its customers on its website, making this information publically available. Additionally, the pricing information of winning bidders of a government contract, such as Hill Country, is generally not excepted under section 552.110(b). Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see also* ORD 319 at 3. *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government

contract awards. *See* ORD 514. We therefore conclude the city may not withhold any of the remaining responsive information under section 552.110(b).

NBT and NBWS raise section 552.1175 of the Government Code for their information. Section 552.1175 applies to information held by a governmental body concerning the following individuals:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;
- (8) police officers and inspectors of the United States Federal Protective Service; and
- (9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement.

Gov't Code § 552.1175(a). If the information at issue concerns an individual listed in section 552.1175(a), then section 552.1175(b) provides:

- (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.

Id. § 552.1175(a), (b). Upon review, we determine the city must withhold the information we have marked under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b). If the individual is no longer a licensed peace officer or no election is made, the city may not withhold the individual's information under section 552.1175. None of the remaining responsive information pertains to the type of individuals to whom section 552.1175 applies. As such, the city may not withhold any of the remaining responsive information on this basis.

We note the remaining responsive information is subject to section 552.130 of the Government Code.⁵ Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the city must withhold the information we have marked under section 552.130.

Section 552.136 of the Government Code states, "Notwithstanding 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." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the city must withhold the insurance account numbers and insurance policy numbers we have marked under section 552.136.

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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release.⁶

In summary, the city may withhold the information you have marked under section 552.107(1) of the Government Code. The city must withhold the information we have marked under section 552.110(a) of the Government Code. The city must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The city must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code, and the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release. The city must release the remaining responsive information.⁷ However, the city need not release information to the second requestor that is not responsive to his requests.

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.

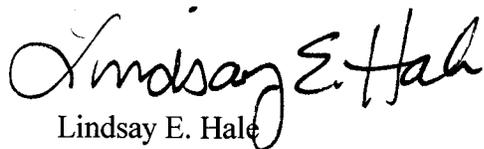
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at

⁶We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain 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 decision.

⁷We note the information being released in response to the first request contains the first requestor's motor vehicle information, to which the first requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code §§ 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests), .130. Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *Id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Thus, if the city receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the first requestor's motor vehicle record information.

(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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 480827

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

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