



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2013

Ms. Julie Y. Fort
Counsel for City of Duncanville
Messer, Rockefeller & Fort, P.L.L.C.
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2013-08660

Dear Ms. Fort:

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# 488386.

The City of Duncanville (the "city"), which you represent, received a request for the names and addresses for all city council members, Duncanville Community and Economic Development Corporation members, board of adjustment members, planning and zoning members, and city employees since 2001. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although you also raise section 552.1175 of the Government Code, the proper exception in this instance is section 552.117 of the Government Code because the city holds the information at issue in an employment context.

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).

Initially, as you acknowledge, the request for information is for only employee names and addresses. Accordingly, to the extent the information you submitted contains other items of information, that information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a)(2) provides for the required public disclosure of “the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(2). Thus, the employee names at issue are subject to section 552.022(a)(2) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the employee names at issue under section 552.103. We will, however, consider your arguments under sections 552.103 and 552.117 of the Government Code for the remaining responsive information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 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. Accordingly, if the individual whose information is at issue in Exhibit D-2 is still a licensed peace officer, the city must withhold the home address you have highlighted under section 552.117(a)(2).³

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 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). Whether a particular piece of information is protected by

³We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

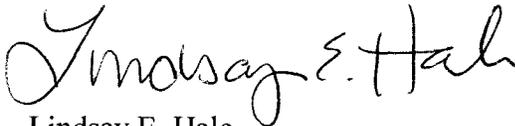
section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The submitted information includes the election forms for the individuals whose information is at issue. As such, the city must withhold the remaining home addresses you have highlighted in Exhibits D-1 and D-2 under section 552.117(a)(1) of the Government Code.⁴

In summary, if the individual whose information is at issue is still a licensed peace officer, the city must withhold the home address you have highlighted in Exhibit D-2 under section 552.117(a)(2) of the Government Code. The city must withhold the remaining home addresses you have highlighted in Exhibits D-1 and D-2 under section 552.117(a)(1) of the Government Code. The city must release the remaining responsive names of individuals.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 488386

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.