



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2013

Mr. Ray R. Ortiz  
Counsel for the City of Converse  
Jones, Andrews & Ortiz  
10100 Reunion Place, Suite 600  
San Antonio, Texas 78216

OR2013-14783

Dear Mr. Ortiz:

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# 497420.

The City of Converse (the "city"), which you represent, received a request for five categories of information pertaining to the use of the city's court offices by high school students for a school project. You inform us you have released some of the requested information to the requestor. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.148, and 552.152 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you assert categories two through five of the request are not proper requests for information. We note, in responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). Thus, the city must make a good faith effort to relate the requestor's request to any

responsive information held by or on behalf of the city. To the extent information responsive to categories three through five of the request existed when the city received this request, it must be released, unless you have already done so. *See* Gov't Code § 552.221, .301, .302; Open Records Decision No. 664 (2000). As you have submitted information the city deems responsive to category two of the request, we will address your claimed exceptions for this information.

Next, you assert the information responsive to categories one and two of the request are not subject to the Act because they relate to the judiciary. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of "governmental body" under Act specifically excludes the judiciary). Information that is "collected, assembled, or maintained by or for the judiciary" is not subject to the Act. *Id.* § 552.0035(a); *see also* Tex. R. Jud. Admin. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act"). Upon review, however, we note the submitted information is maintained for administrative purposes by the city. Consequently, because the submitted information is maintained by the city for administrative purposes, we find the information at issue was not collected, assembled, or maintained by or for the judiciary. Accordingly, the submitted information is subject to the Act, and we will consider your arguments against disclosure.

Next, you inform us you inadvertently released some of the requested information to the requestor. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential. Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note some of this information is subject to sections 552.117 and 552.137 of the Government Code, which make information confidential under the Act.<sup>1</sup> Accordingly, we will consider the applicability of these exceptions to the information you have released. We will also consider the applicability of sections 552.117 and 552.137 to the submitted information not previously released, as well as address your arguments against disclosure for the information that has not been previously released.

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<sup>1</sup>The 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).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that another statute makes confidential. Gov’t Code § 552.101. Section 552.101 encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the information we have indicated implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy.<sup>2</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Upon review, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117 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. 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). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the mayor elected to keep such information confidential under section 552.024, the city must withhold the information we have marked, and the portions of the submitted videos containing information subject to section 552.117,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

under section 552.117 of the Government Code.<sup>3</sup> If the mayor did not make a timely election under section 552.024, the city may not withhold any of this information under section 552.117 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* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body 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 city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.<sup>4</sup>

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:
  - (1) the name, age, home address, home telephone number, or social security number of the minor;
  - (2) a photograph of the minor; and
  - (3) the name of the minor’s parent or legal guardian.

*Id.* § 552.148. You state the submitted surveillance videos depict minors participating in a school activity. However, you provide no explanation as to how this activity constitutes a “recreational program or activity.” *See id.* § 552.148(b). Accordingly, the city may not withhold any of the submitted information under section 552.148 of the Government Code.

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<sup>3</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2).

<sup>4</sup>We note Open Records Decision No. 684 (2009) is 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.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. You seek to withhold the submitted surveillance videos which depict dispatchers for the city's Emergency Services. We have reviewed your arguments and conclude you have not demonstrated the disclosure of these individuals' identities would subject them to a substantial threat of physical harm. Accordingly, the city may not withhold any of the submitted information under section 552.152 of the Government Code.

In summary, the city must withhold the portion of the video we have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy. To the extent the mayor elected to keep such information confidential under section 552.024, the city must withhold the information we have marked, and the portions of the videos containing information subject to section 552.117, under section 552.117 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. The remaining submitted 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/eb

Ref: ID# 497420

Enc. Submitted documents

c: Requestor  
(w/o enclosures)