



February 5, 2001

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
300 N. Loraine, Rm. 320  
P.O. Box 1152  
Midland, Texas 79702-1152

Open Records Decision No. 670

Re: What information is excepted under section 552.117(2) of the Government Code and whether a governmental body may withhold the information without requesting a decision from the Attorney General. (ORQ-56)

Dear Mr. Weaver:

The City of Midland (the "city") received a request from a former peace officer for a copy of his "personal records" [sic] under the Public Information Act (the "Act"), chapter 552 of the Government Code. The City claims that peace officers' addresses and phone numbers are excepted under section 552.117(2) of the Government Code. Therefore, pursuant to section 552.301 of the Government Code, we consider what information is excepted under section 552.117(2) of the Government Code and whether a governmental body may withhold the information without requesting a decision from the Attorney General.

Section 552.117(2) of the Government Code provides:

Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.<sup>1</sup>

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<sup>1</sup>Section 552.024 of the Government Code provides:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing not later than the 14th day after the date on which:

Article 2.12 of the Code of Criminal Procedure provides:

The following are peace officers:

- (1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 415, Government Code;
- (2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 415, Government Code;
- (3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 415, Government Code;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
- (6) law enforcement agents of the Texas Alcoholic Beverage Commission;

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- (1) the employee begins employment with the governmental body;
  - (2) the official is elected or appointed; or
  - (3) the former employee or official ends service with the governmental body.
- (c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.
- (d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.
- (e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access.

- (7) each member of an arson investigating unit commissioned by a city, a county, or the state;
- (8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;
- (9) officers commissioned by the General Services Commission;
- (10) law enforcement officers commissioned by the Parks and Wildlife Commission;
- (11) airport police officers commissioned by a city with a population of more than one million, according to the most recent federal census, that operates an airport that serves commercial air carriers;
- (12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;
- (13) municipal park and recreational patrolmen and security officers;
- (14) security officers commissioned as peace officers by the comptroller;
- (15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;
- (16) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);
- (17) investigators commissioned by the Texas State Board of Medical Examiners;
- (18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;
- (19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

- (20) investigators employed by the Texas Racing Commission;
- (21) officers commissioned by the State Board of Pharmacy;
- (22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;
- (23) investigators commissioned by the [A]ttorney [G]eneral under Section 402.009, Government Code;
- (24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;
- (25) an officer employed by the Texas Department of Health under Section 431.2471, Health and Safety Code;
- (26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;
- (27) officers commissioned by the state fire marshal under Chapter 417, Government Code;
- (28) an investigator commissioned by the commissioner of insurance under Article 1.10D, Insurance Code;
- (29) apprehension specialists commissioned by the Texas Youth Commission as officers under Section 61.0931, Human Resources Code; and

Text of subd. (30) as added by Acts 1999, 76th Leg., ch. 322, § 2:

- (30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code.

Text of subd. (30) as added by Acts 1999, 76th Leg., ch. 882, § 2:

- (30) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 415.016, Government Code.

Text of subd. (30) as added by Acts 1999, 76th Leg. ch. 974, § 37:

(30) board investigators commissioned by the Texas Commission on Private Security under Section 10(f), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes).

Section 51.212(2) also refers to section 51.212 of the Texas Education Code, which provides as follows:

(a) The governing boards of private institutions of higher education, including private junior colleges, are authorized to employ and commission campus security personnel for the purpose of enforcing the law of this state on the campuses of private institutions of higher education. Any officer commissioned under the provisions of this section is vested with all the powers, privileges, and immunities of peace officers while on the property under the control and jurisdiction of the respective private institution of higher education or otherwise in the performance of his assigned duties. Any officer assigned to duty and commissioned shall take and file the oath required of peace officers, and shall execute and file a good and sufficient bond in the sum of \$1,000, payable to the governor, with two or more good and sufficient sureties, conditioned that he will fairly, impartially, and faithfully perform the duties as may be required of him by law. The bond may be sued on from time to time in the name of the person injured until the whole amount is recovered.

(b) The governing boards of private institutions of higher education are authorized to hire and pay on a regular basis law-enforcement officers commissioned by an incorporated city. The officers shall be under the supervision of the hiring institution, but shall be subject to dismissal and disciplinary action by the city. An incorporated city is authorized to contract with a private institution of higher education for the use and employment of its commissioned officers in any manner agreed to, provided that there is no expense incurred by the city.

(c) In this section, "private institution of higher education" has the meaning assigned by Section 61.003(15) of this code.

In Open Records Decision No. 532 at 5 (1989), we concluded that the City of Clute Police Department could withhold the home phone numbers and addresses of individuals falling within the scope of article 2.12 of the Code of Criminal Procedure and section 51.212

of the Education Code. We now conclude that all governmental bodies covered by the Act may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies. This decision as to this category of information is, then, a "previous determination" under section 552.301(a) of the Act.

In addition, all governmental bodies covered by the Act may withhold the personal cellular phone numbers and personal pager numbers of individuals falling within the scope of article 2.12 of the Code of Criminal Procedure and section 51.212 of the Education Code, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies. Assuming that cellular phones and pagers are purchased by a peace officer or security officer with his or her own funds, protecting those numbers from disclosure fulfills one of the purposes of section 552.117 of the Act, which is to protect public officials and employees from being harassed while at home. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.108 protects from required public disclosure cellular phone numbers assigned to public and private vehicles used by county officials and employees with specific law enforcement responsibilities; predecessor to section 552.117 does not apply to cellular phone numbers paid for by county and intended for use at *work* for county business). This decision as to personal cellular phone numbers and personal pager numbers is a "previous determination" under section 552.301(a) of the Act.

Different considerations apply if the governmental official or employee pays for the purchase and installation of and calls to and from a cellular phone in his private vehicle and simply seeks reimbursement for calls made on government business. *See* Open Records Decision No. 506 at 6 (1988). In that situation, any vouchers for reimbursement would be subject to disclosure under section 552.022(a)(3) of the Act as a "voucher . . . relating to the receipt or expenditure of public or other funds by a governmental body." Likewise, we believe that documentation attached to a voucher to support the expenditure of public funds is also subject to release under section 552.022(a)(3). However, if such a voucher included the personal cellular phone number of a governmental official or employee, that number would still be confidential information under section 552.117.

In this case, the city must withhold the submitted peace officers' home addresses and home telephone numbers. However, the city must release the requestor's section 552.117 information to him under section 552.023. *See* Gov't Code § 552.023 (a person has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests).

SUMMARY

All governmental bodies covered by the Public Information Act may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure or "security officer" in section 51.212 of the Texas Education Code, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies. This decision as to this type of information is a "previous determination" under section 552.301(a) of the Act.

Yours very truly,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a large initial "J" and "C".

JOHN CORNYN  
Attorney General of Texas

ANDY TAYLOR  
First Assistant Attorney General

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