ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2004

Mr. Kevin D. Pagan
Deputy City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-1435

Dear Mr. Pagan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199499.

The City of McAllen (the "city") received a request for information pertaining to an accident involving city employees. The city has released all but the employees' home addresses and home telephone numbers, which it claims are excepted from public disclosure under section 552.117 of the Government Code. Furthermore, although the city contends driver's license information and social security numbers are excepted from disclosure under privacy, the submitted information contains no such information.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, 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. 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). As to Mr. Fred Wagner, the city states he did not elect under section 552.024. Accordingly, the city must release Mr. Wagner's home address and home telephone number. As for the remaining employees, the city must withhold their home addresses and home telephone numbers under section 552.117 only if they requested confidentiality under section 552.024 prior to the date on which the request for this information was made. The city may not withhold this information under section 552.117 if the employees did not timely elect to keep the information confidential.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 199499

Enc: Submitted documents

c: Dr. Anthony Rogers
CBS-McAllen Research Analyst
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(w/o enclosures)