



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2005

Ms. Linda L. Sjogren
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2005-08895

Dear Ms. Sjogren:

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# 233328.

The City of San Angelo (the "city") received a request for certain employment applications, interview questions and answers, and an inspection sheet the requestor filled out. You inform us that the city has released some of the requested information. You seek to withhold some of the remaining information under sections 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address and telephone number and social security number of a peace officer, as well as information that reveals whether the officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the information that the city seeks to withhold under section 552.117(a)(2) relates to a peace officer who is employed by the city police department. We therefore agree that the city must withhold that information under section 552.117(a)(2).

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of

a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the city may only withhold requested information under section 552.117(a)(1) on behalf of a current or former employee of the city who requested confidentiality under section 552.024 prior to the date of the city's receipt of the request. The city may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election under section 552.024 to keep the information confidential.

In this instance, you seek to withhold information relating to two individuals under section 552.117(a)(1). You inform us that one of these individuals is an employee of the city who submitted a request for confidentiality under section 552.024. You do not inform us, however, whether the employee did so before the city received the present request for information. Nevertheless, if the employee in question made his request under section 552.024 prior to the date of the city's receipt of this request, then the city must withhold the employee's home address, home telephone numbers, and social security number under section 552.117(a)(1). In the event that the employee did not make a timely request for confidentiality under section 552.024, the city may not withhold any of his information under section 552.117(a)(1).

You also assert that section 552.117(a)(1) is applicable to submitted information that relates to a former employee of a governmental body other than the city. We note, however, that the responsibilities under section 552.117(a)(1) of a governmental body that receives a request for information encompass only the current and former employees and officials of the governmental body that received the request. *See* Open Records Decision No. 674 at 4 (2001) (governmental body is normally obliged under Gov't Code § 552.117 to protect only information pertaining to employees and officials of that governmental body). In this regard, section 552.024(a) provides only that an employee of a governmental body may deny public access to certain information "in the custody of the governmental body." *Id.* Moreover, the Act provides no mechanism for a governmental body to inform itself of whether a particular individual either is or has been an employee or official of another governmental body or, in that event, whether such an individual has elected under section 552.024 to keep his or her section 552.117 information confidential. *Id.* Thus, there is no legislative indication that section 552.117(a)(1) requires a governmental body that receives a request for information to protect information relating to an individual who neither is nor has been an employee or official of that governmental body. Therefore, we conclude that the city may not withhold any of the submitted information that relates to the former employee of another governmental body under section 552.117(a)(1).

Section 552.147 of the Government Code¹ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.² Therefore, the city must withhold all of the submitted social security numbers under section 552.147.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Gov’t Code § 552.130(a)(1). We agree that the Texas driver’s license numbers that you have marked are excepted from disclosure under section 552.130. We have marked additional information that must also be withheld under this exception.

Section 552.137 of the Government Code is applicable to certain e-mail addresses. This exception provides in part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov’t Code § 552.137(a)-(b). Section 552.137 excepts from disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c)(1)-(4). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We agree that city must withhold the e-mail addresses that you have marked under section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

In summary: (1) the city must withhold the marked information that relates to the peace officer under section 552.117(a)(2); (2) the city employee’s home address, home telephone numbers, and social security number are excepted from disclosure under section

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

552.117(a)(1) if he made a timely request for confidentiality under section 552.024; (3) the city must withhold the social security numbers under section 552.147; (4) the city must withhold the Texas driver's license information under section 552.130; and (5) the city must withhold the e-mail addresses under section 552.137, unless the owner of an e-mail address has affirmatively consented to its disclosure. The rest of the submitted information must be released.

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).

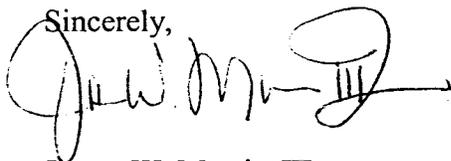
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Texas 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 at the Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 233328

Enc: Submitted documents

c: Mr. Daniel Cardenas
1417 South Irving Street
San Angelo, Texas 76903
(w/o enclosures)