



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2006

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Room 7BN
Dallas, Texas 75201

OR2006-13930

Dear Mr. Toscano:

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# 265340.

The City of Dallas (the "city") received a request for information relating to the city's immigration sponsorship of a named individual and other aliens. You state that some of the requested information will be released. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

We first note that the submitted documents include ETA 9035E forms, titled "Labor Condition Application for H-1B and H-1B1 Nonimmigrants." Section 655.760 of title 20 of the Code of Federal Regulations makes those documents expressly public. *See* 20 C.F.R. § 655.760(a)(1). Therefore, the submitted ETA 9035E forms, which we have marked, must be released to the requestor.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

confidential. You raise section 552.101 in conjunction with section 1202 of title 8 of the United States Code.² Section 1202 provides in part:

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential[.]

8 U.S.C. § 1202(f). You contend that the information submitted as Exhibit B is confidential under section 1202(f). You indicate, however, that the information in question is maintained by the city. You have not explained how or why information held by the city would qualify as a record of the Department of State or of a diplomatic or consular office of the United States for the purposes of section 1202(f). *See Open Records Decision No. 649 at 3 (1996)* (language of confidentiality provision controls scope of its protection). Therefore, as you have not demonstrated that the information in question falls within the scope of the federal statute, the city may not withhold any of the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 1202 of title 8 of the United States Code. *See also Medina-Hincapie v. Dep't of State*, 700 F.2d 737, 741 (D.C. Cir. 1983) (“Under section [1202(f)] the Secretary of State has no authority to disclose material to the public.”); *Perry-Torres v. U.S. Dep't of State*, 404 F.Supp.2d 140, 143-44 (D. D.C. 2005) (Department of State properly withheld information relating to denial of visa application under 8 U.S.C. § 1202(f)); *Church of Scientology of California v. Dep't of State*, 493 F.Supp. 418, 423 (D. D.C. 1980) (8 U.S.C. § 1202(f) applicable to document described as “permanent record of State Department”).

We note, however, that some of the documents in Exhibit B are confidential under section 1304 of title 8 of the United States Code. Section 1304 addresses the confidentiality of the registration of aliens under section 1301 of the United States Code. Section 1304(b) provides that “[a]ll registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only (1) pursuant to section 1357(f)(2) of this title, and (2) to such persons or agencies as may be designated by the Attorney General.” 8 U.S.C. § 1304(b). Section 264.1 of title 8 of the Code of Federal Regulations lists the type of documents that constitute registration forms. *See* 8 C.F.R. § 264.1. We have marked the documents in Exhibit B that fall within the scope of section 264.1. The requestor does not have a right of access to those documents. Therefore, the city must withhold the marked documents under section 552.101 of the Government Code in conjunction with section 1304 of title 8 of the United States Code.

²We note that a federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See Open Records Decision No. 476 (1987)* (addressing statutory predecessor).

You also raise section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public 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 of the Government Code. 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, information may only be withheld under section 552.117(a)(1) on behalf of an employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an employee who did not timely request under section 552.024 that the information be kept confidential.

You state that the submitted information relates to a city employee who has requested that his section 552.117 information be kept confidential. You do not indicate, however, whether the employee did so prior to the city's receipt of this request for information. Nevertheless, if the employee who is the subject of the submitted information requested confidentiality under section 552.024 before the city received this request for this information, then the city must withhold the information that we have marked under section 552.117(a)(1). But if the employee's request for confidentiality was not timely, then the marked information may not be withheld under section 552.117(a)(1).

We note that under section 552.147 of the Government Code, "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ Gov't Code § 552.147(a). Thus, the city must withhold the employee's social security number under section 552.147.

Lastly, we address your claim under section 552.137 of the Government Code. This section states in part that "[e]xcept 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 [the Act]." Gov't Code § 552.137(a). Section 552.137 protects 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. This exception is not applicable to the types of e-mail addresses listed in section 552.137(c) or 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. The employee's personal e-mail address, which you have

³We also 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.

marked, must be withheld under section 552.137 unless the employee has consented to its public disclosure.

In summary: (1) the city must withhold the marked documents that are confidential under section 552.101 of the Government Code in conjunction with section 1304 of title 8 of the United States Code; (2) if the employee who is the subject of the submitted information timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information that we have marked under section 552.117(a)(1) of the Government Code; (3) the city must withhold the employee's social security number under section 552.147 of the Government Code; and (4) the city must withhold the employee's personal e-mail address under section 552.137 of the Government Code unless he has 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).

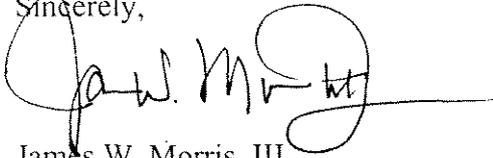
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "J.W. Morris III", with a long horizontal line extending to the right.

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

JWM/eb

Ref: ID# 265340

Enc: Submitted documents

c: Ms. Bright Siaw Afriyie
1129 Beechwood Lane
Cedar Hill, Texas 75104
(w/o enclosures)