



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2006

Mr. Ron G. MacFarlane, Jr.  
Dealey, Zimmerman, Clark, Malouf & MacFarlane, P.C.  
3131 Turtle Creek Boulevard, Suite 1201  
Dallas, Texas 75219-5415

OR2006-01767

Dear Mr. MacFarlane:

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# 242862.

The City of Cedar Hill (the "city"), which you represent, received a request for four categories of information regarding two named officers: (1) personnel files, (2) training records, (3) any complaints which may have resulted in disciplinary action, and (4) any investigations regarding these officers. You state that the city has released some of the requested information to the requestor. You also state that the city does not have some of the requested information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim, however, that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes W-4 forms. 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."<sup>1</sup> Gov't Code § 552.101.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

This exception encompasses information that other statutes make confidential. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code, which is encompassed by section 552.101, renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted W-4 forms, which we have marked, are tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

Next, we address your claims under section 552.117. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace 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. We have marked information relating to police officers that the city must withhold under section 552.117(a)(2).<sup>2</sup>

The remaining submitted information also includes Texas driver's license numbers. Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The city must withhold the Texas driver's license numbers we have marked under section 552.130.

Finally, section 552.137 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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address 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 e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Thus, the city must withhold the e-mail address we have marked under section 552.137 unless its owner has affirmatively consented to its release. *See* Gov't Code § 552.137(b).

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<sup>2</sup>We note that section 552.117 is applicable only to a personal pager or cell phone number paid for by the employee or peace officer. *See* Open Records Decision No. 670 at 6(2001) (statutory predecessor to section 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). A pager or cell phone number provided to an employee or peace officer at public expense may not be withheld under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use).

In summary, the city must withhold the W-4 forms, which we have marked, under section 552.101 of the Government Code in conjunction with federal law. The marked information must be withheld under section 552.117(a)(2) of the Government Code. The marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code. The personal e-mail address we have marked must be withheld under section 552.137 unless the city has received affirmative consent to release this information. The remaining information must be released to the requestor.

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 "Brian J. Rogers". The signature is fluid and cursive, with the first name "Brian" being the most prominent part.

Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 242862

Enc. Submitted documents

c: T. K. Grey  
1357 Middleton Drive  
Cedar Hill, Texas 75104  
(w/o enclosures)