



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2007

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2007-01220

Dear Ms. Hampton:

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# 270274.

The City of Bryan (the "city") received a request for the first name, last name, mailing address, contact phone numbers, home e-mail address, work e-mail address, department of employment, and date of employment of all city employees. You state that you do not maintain the personal e-mail addresses of city employees.¹ You claim that the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹ The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert that a portion of the submitted information is excepted under section 552.117, which states the following:

(a) 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 of the following person or that reveals whether the person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
- (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 or 552.1175, as applicable[.]

Gov't Code § 552.117(a)(1)-(2). Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone numbers, 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 and 552.1175 of the Government Code.³ Thus, to the extent that city employees are peace officers, their home addresses and home telephone numbers must be withheld under section 552.117(a)(2).

Next we address the disclosure of information related to employees who are not peace officers. Section 552.117(a)(1) also excepts the home address, home telephone numbers, and social security numbers of employees of a governmental body, as well as information that reveals whether the employee has family members. However, in order for a piece of information to be excepted from disclosure under section 552.117(a)(1), the employee must request that *this information be kept confidential prior to the date on which the request for information is received*. Thus, whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, the city must only withhold the home address and home telephone number of employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The city may not withhold the home address and home telephone number of those employees who did not make a timely election to keep this information confidential or for those who elected to allow release of their home address and home telephone number.

³ "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Next, you assert that the work e-mail addresses of police officers are excepted from public disclosure under section 552.108(b). Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution... if: (1) release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). Section 552.108(b) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin, 2002, no pet.). This office has determined that the statutory predecessor to section 552.108(b) excepts from disclosure “the cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2 (1988). In that decision, we noted that the purpose of the cellular telephones is to ensure that law enforcement officials have immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with the law enforcement duties of these individuals. *Id.* at 2. You have not provided any arguments explaining how release of the officers’ e-mail addresses would interfere with the officers’ specific law enforcement responsibilities. See Gov’t Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face). Therefore, the city has failed to establish the applicability of section 552.108(b) to the work e-mail addresses of police officers.

Next, you seek to withhold the names, department of employment, and work e-mail addresses of Bryan Texas Utilities (“BTU”) employees under section 552.133. We note that the name and date of employment of an employee of a governmental body is expressly public under section 552.022(a)(2) of the Government Code unless such information is confidential under other law. Gov’t Code § 552.022(a)(2). However, section 552.022 does not apply to information that is excepted from required disclosure under section 552.133 of the Government Code. Gov’t Code § 552.133(d). Accordingly, we will address the city’s argument that the names, department of employment, and email addresses of BTU employees are excepted from disclosure under this exception.

Section 552.133 of the Government Code excepts from disclosure a public power utility’s information related to a competitive matter. Section 552.133(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive

matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.133(b). A "competitive matter" is defined as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. Gov't Code § 552.133(a)(3). Section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.133(c).

You state the city council approved Resolution No. 8383 pursuant to section 552.133 in which it defined "personnel staffing levels" of BTU as within the scope of the term "competitive matter." "Personnel staffing levels" refers to the number and composition of employees working for BTU. You explain that release of the name, department, and e-mail address of every BTU employee would reveal the composition of each department or division of BTU. However, we note, that based upon the city's characterization of "personnel staffing levels" the release of any of the requested information, not only employee names, department of employment, and work e-mail, but also the employees' mailing address, contact phone numbers, and date of employment would reveal the number and composition of employees working for BTU. None of this information is among the thirteen categories of information expressly exempted from the definition of competitive matter, and based on the information provided in connection with this request, we cannot conclude that the city council failed to act in good faith. Therefore, the name, mailing address, contact phone numbers, work e-mail address, department of employment, and date of employment of all BTU employees are excepted from disclosure under section 552.133 of the Government Code.

In summary, the city must withhold the home address and home telephone number of city peace officers under section 552.117(a)(2) regardless of whether the individual made an election under section 552.024. To the extent that other city employees made their election under section 552.024 prior to the city receiving this request, you must withhold the home telephone number and home address of these employees under section 552.117(a)(1). You

must withhold the name, mailing address, contact phone numbers, work e-mail address, department of employment, and date of employment of BTU employees under section 552.133. The remaining 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).

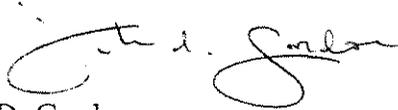
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "Justin D. Gordon". The signature is fluid and cursive, with the first name "Justin" being the most prominent.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 270274

Enc. Submitted documents

c: Mr. Stephen Smith
5106 Eagle Nest Drive
Arlington, Texas 76017
(w/o enclosures)