



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2007

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2007-10408

Dear Ms. Dudley:

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# 290008.

The City of Cleburne (the "city") received a request for information relating to four city employees. You state that the city has released some of the responsive information to the requestor, with some information redacted pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001).¹ You state that the city does not have any information responsive to a portion of the request.² You claim 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.

¹See ORD No. 670 at 6 (authorizing all governmental bodies that are subject to chapter 552 of the Government Code to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting an attorney general decision under Gov't Code § 552.117(a)(2)).

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.117(a)(1) of the Government Code exempts 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 received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. In this case you inform us, and provide documentation, that the employees whose home addresses and social security numbers are at issue timely elected confidentiality under section 552.024. Accordingly, we agree that the city must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The remaining 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 that reads "Henisha D. Anderson". The signature is written in a cursive style with a large, stylized "H" and "A".

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/jb

Ref: ID# 290008

Enc. Submitted documents

c: Ms. Mary Hazelwood
Cantey Hanger, L.L.P.
Burnett Plaza, Suite 2100
801 Cherry Street, Unit #2
Fort Worth, Texas 76102-6881
(w/o enclosures)