



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2007

Mr. Donald R. Postell
City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2007-16834

Dear Mr. Postell:

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# 297923.

The City of Grand Prairie (the "city") received a request for city employee roster including the name, position, date of birth, city cellular telephone number, and salary all city employees.¹ You state that you have released all of the requested information except for the requested birth dates. You claim that the submitted information is excepted from disclosure under sections 552.115 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received comments from a representative of the Texas Municipal Police Association ("TMPA"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹The city sought and received clarification of the information requested and the requestor narrowed his request to exclude the cellular telephone number of undercover police officers. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The city received the request for information on October 2, 2007, but did not submit a representative samples of the information at issue until October 24. Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because sections 552.115 and 552.117 can provide a compelling reason to overcome the presumption, we will address your arguments under these exceptions.

Section 552.115 of the Government Code excepts from disclosure the birthdates of city employees. Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that "a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official." Gov't Code § 552.115(a)(1). We note that the information in this instance is a birth date maintained by the city. Because section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics or a local registration official, we conclude that the department may not withhold the birth date information pursuant to that section. *See* Open Records Decision No. 338 (1982).

Next, you claim that the submitted birth date information is excepted from disclosure under section 552.117. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone 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 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117(a)(2) protects the same types of information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code. *Id.* § 552.117(a)(2). Section 552.117 is not applicable to birth dates. *Id.* § 552.117(a). Thus, because the only information at issue in this instance is a birth

date, we conclude that section 552.117 is not applicable and the city may not withhold the information at issue under this exception.

Finally, we address the comments submitted by TMPA. We note that although TMPA asserts that it objects to release of the birth dates of the city's police officers, TMPA has failed to raise any exception to disclosure of the information at issue. As no other exception to disclosure of the requested information is raised, the birth date 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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" and last name "Gordon" clearly legible.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 297923

c: Mr. John Nielson
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265