



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 28, 2008

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2008-01265

Dear Mr. Johnson:

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# 302718.

The City of Waco (the "city") received a request for information pertaining to applicants for the chief-of-police position. You indicate that you are withholding social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You state that some of the requested information has been released, but claim that some of the submitted information is excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). The city must withhold the information of the police chief that we have marked under section 552.117(a)(2). However, you do not inform us, and the submitted information does not otherwise indicate, that any of

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<sup>1</sup>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.

the remaining applicants are or have been employees of the city; therefore, you have failed to establish that any of the remaining information is excepted under section 552.117.

We note, however, that section 552.1175 of the Government Code may be applicable to some of the remaining information. Section 552.1175(b) provides the following:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, section 552.1175 is applicable to peace officers' cell phone numbers only if the officers paid for the cell phones with their own funds. *Cf.* Open Records Decision No. 670 at 6 (2001). The submitted documents contain information pertaining to officers who do not work for the city. The city must withhold the information we have marked under section 552.1175(b) if the individuals are currently peace officers as defined by article 2.12 of the Code of Criminal Procedure who elect to restrict access to this information in accordance with section 552.1175(b). However, the city may only withhold the cell phone numbers we have marked under section 552.1175 if the officers also paid for the cell phones with their own funds. *Cf. id.*

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note that section 552.130 does not encompass motor vehicle record information of other states. We agree that the city must withhold the Texas motor vehicle record information you have marked, as well as the information we have marked, under section 552.130.

Finally, we note that some of the remaining information is excepted under section 552.137 of the Government Code. 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 addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137.

To conclude, the city must withhold the information we have marked under section 552.117 of the Government Code, the Texas motor vehicle record information marked under section 552.130 of the Government Code, and the e-mail addresses we have marked under section 552.137 of the Government Code. The city must also withhold the information we have marked under section 552.1175 of the Government Code if the individuals are currently peace officers as defined by article 2.12 of the Code of Criminal Procedure who elect to restrict access to this information in accordance with section 552.1175(b); however, the city may only withhold the cell phone numbers we have marked under section 552.1175 if the officers paid for the cell phones with their own funds. The city must release the remaining information.

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).

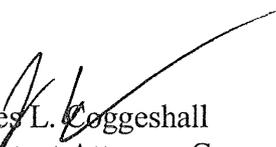
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 302718

Enc. Submitted documents

c: Mr. Erin Quinn  
900 Franklin Avenue  
Waco, Texas 76702  
(w/o enclosures)