



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2008-08376

Dear Mr. Phillips:

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# 313116.

The City of Fort Worth (the "city") received a request for information related to its automated red light cameras. You inform us that the city has redacted social security numbers from the submitted documents under section 552.147 of the Government Code.¹ You also state that Texas motor vehicle information has been redacted pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).² You claim that some of the remaining submitted information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We assume that the city has released any other information that is responsive to this request, to the extent that such information existed when the city received the request. If not, then any

¹Section 552.147(b) 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.

²See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations).

such information must be released immediately.³ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We note that some of the information that the city seeks to withhold under section 552.117 of the Government Code is related to peace officers. Section 552.117(a)(2) excepts from disclosure a peace officer's home address, home telephone number, and social security number, along with information that reveals whether the officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The city must withhold the information that we have marked under section 552.117(a)(2) to the extent that the information consists of the officer's home address, home telephone or personal cell phone number, and family member information. See Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) protects personal cellular phone numbers and personal pager numbers of peace officers who pay for cell phones or pagers with their own funds).

You raise section 552.117(a)(1), which excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of an official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an official or employee who did not make a timely request for confidentiality under section 552.024.

You have highlighted addresses and telephone numbers that the city seeks to withhold under section 552.117(a)(1). You state that the employees concerned requested confidentiality for their home addresses and telephone numbers prior to the city's receipt of this request for information. Based on your representation, we agree that the city must withhold the rest of the highlighted home addresses under section 552.117(a)(1). We conclude that the city also must withhold the rest of the highlighted telephone numbers, as well as the telephone number that we have marked, under section 552.117(a)(1), to the extent that the information consists of the employees' home telephone numbers or of cell phone numbers paid for by the employees themselves. We note that section 552.117(a)(1) is not applicable to an

³We 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).

employee's business telephone number or to a civilian employee's cell telephone number if a governmental body pays for the cell phone service. *See* Open Records Decision No. 506 (1988) (addressing statutory predecessor). Additionally, we have marked family member information that must be withheld under section 552.117(a)(1) if the employee concerned timely elected to keep her family member information confidential.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You have highlighted e-mail addresses that the city seeks to withhold. We note that some of the e-mail addresses in question fall within the scope of section 552.137(c) and may not be withheld under section 552.137. Those e-mail addresses, which we have marked, must be released. We conclude that the city must withhold the rest of the highlighted e-mail addresses under section 552.137, unless the owner of an e-mail address has consented to its disclosure.

In summary: (1) the city must withhold the information that we have marked under section 552.117(a)(2) of the Government Code to the extent that the information consists of a peace officer's home address, home telephone or personal cell phone number, and family member information; (2) the city must withhold the following information under section 552.117(a)(1): (a) the rest of the highlighted home addresses; (b) the rest of the highlighted telephone numbers, to the extent that they consist of the employees' home telephone numbers or of cell phone numbers paid for by the employees themselves; and (c) the family member information that we have marked, if the employee concerned timely requested confidentiality for her family member information under section 552.024 of the Government Code; and (3) except for the marked e-mail addresses that are subject to section 552.137(c) and must be released, the city must withhold the highlighted e-mail addresses under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure. The rest of the 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 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). If the governmental body does not file suit over 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).

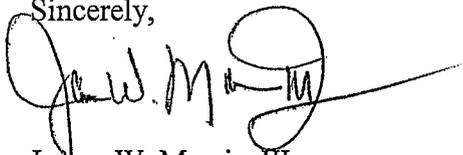
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "James W. Morris, III". The signature is stylized and includes a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 313116

Enc. Submitted documents

c: Mr. Richard Carter
Combined Law Enforcement Associations of Texas
904 Collier
Fort Worth, Texas 76102
(w/o enclosures)