



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2009

Ms. Evelyn W. Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2009-00756

Dear Ms. Njuguna:

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# 333061.

The Houston Municipal Court (the "court") received a request for information pertaining to the employment and qualifications of a named prosecutor. You state that some of the requested information will be released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the court failed to raise section 552.137 within the ten-business-day deadline mandated by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. However, because section 552.137 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your argument under this exception. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

Section 552.117(a)(1) of the Government Code 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 of the Government Code. 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 a current or former 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. You state, and provide documentation, that the employee whose personal information you have marked elected to keep his information confidential prior to the date the court received the instant request. Accordingly, the court must withhold the information that you have marked, as well as the additional information we have marked, under section 552.117(a)(1).

Next, you contend that a Texas driver's license number you have marked in the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that "relates to. . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130. Accordingly, the court must withhold the Texas driver's license number you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Next, you contend the e-mail address you have marked in the remaining information is subject to section 552.137 of the Government Code. Section 552.137 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. *Id.* § 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). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). You state that the owner of the marked e-mail address has not consented to its public disclosure. Accordingly, we agree that the court must withhold the marked e-mail address under section 552.137 of the Government Code.

In summary, the court must withhold the information that you have marked, and the additional information we have marked, in the submitted information under sections 552.117(a)(1) and 552.130 of the Government Code. The court must also withhold the information you have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 333061

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)