



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2009

Mayor Ed Flanagan
City of Bayou Vista
2929 Highway 6, Suite 100
Bayou Vista, Texas 77563

OR2009-02128

Dear Mayor Flanagan:

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# 335170.

The City of Bayou Vista (the "city") received a request for notes taken by three named aldermen during city meetings, and correspondence between these aldermen and other aldermen, the city police department, the ordinance inspector, or the mayor during a specified time period. Although you have not claimed any specific exceptions to disclosure, you ask this office whether any of the submitted information is excepted from disclosure under the Act. We have reviewed the submitted information. We have also received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that portions of the submitted information consist of e-mails that were sent outside of the requested time period. We further note that portions of the submitted information consist of e-mails created after the date the request for information was received by the city. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we must address the city's obligations under section 552.301 of the Government Code, which 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this

office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The city received the request on October 17, 2008. Thus, the ten-day-deadline was October 29, 2008, and the fifteen-day deadline was November 5, 2008. However, the city did not request a ruling until December 9, 2008. Furthermore, the city did not submit any of the information at issue until December 3, 2008, and it raised no exceptions to disclosure, nor did it provide any arguments in support of any exceptions to disclosure.¹ Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

A governmental body's failure to comply with the procedural 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 id.* § 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); Open Records Decision No. 319 (1982). We note that portions of the submitted information may be subject to sections 552.117 and 552.137 of the Government Code, which can provide compelling reasons to withhold information.² Therefore, we will address whether any of the responsive information is excepted from disclosure under sections 552.117 and 552.137.

Section 552.117(a)(1) of the Government Code excepts 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 of the Government Code. *See Gov't Code* §§ 552.117(a)(1), .024. We note section 552.117 also encompasses a personal cellular telephone number, unless the service is paid for by a governmental body. *See Open Records Decision Nos.* 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cell phone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No.* 530 at 5 (1989). The city may only withhold information 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 on which the request for

¹Two packets of the information at issue were received on December 5, 2008. An additional packet of responsive information was received on January 9, 2009.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information was made. You do not inform this office that the city officials whose information we have marked elected to keep their personal information confidential before the city received the instant request for information. We must, therefore, rule conditionally. If the officials whose personal information we have marked timely elected to withhold their personal information under section 552.024, this marked information must be withheld under section 552.117(a)(1). If those officials did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

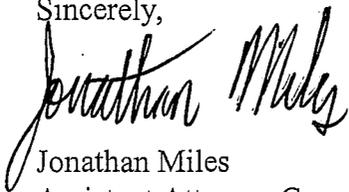
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked in accordance with section 552.137, unless the city receives consent for their release.

In summary, to the extent that the officials at issue made timely elections under section 552.024 of the Government Code, the city must withhold the information we have marked pertaining to those officials under section 552.117(a)(1) of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the city receives consent for their release. The remaining responsive information must be released.

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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 335170

Enc. Submitted documents

c: Requestor
(w/o enclosures)