



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2009-03878

Dear Ms. Byles:

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# 338105 (PIR #1329-09).

The City of Fort Worth (the "city") received a request for a named employee's disciplinary file and cellular telephone logs for a particular time period and related to three specified telephone numbers. You state the city does not have disciplinary records for the named employee.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.117 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have marked information as not responsive to the request because it does not pertain to the named employee. We also note some of the submitted information is not responsive to the instant request because it was created before the requested time period or it does not relate to the three specified telephone numbers. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

We address your arguments for the submitted responsive information. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular 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). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See*

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, the named employee elected to keep his information confidential. We cannot determine, however, if the named employee elected to keep his information confidential prior to the date of the city's receipt of the request for the information. Accordingly, to the extent the named employee timely elected confidentiality for his information under section 552.024, the city must withhold the information you have marked under section 552.117(a)(1) of the Government Code. If the named employee did not timely elect confidentiality for his information, no portion of the submitted information may be withheld under section 552.117(a)(1) of the Government Code.

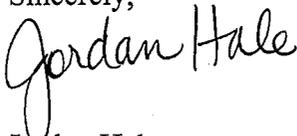
Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Therefore, the city must withhold the utility account numbers you have marked, as well as the utility account numbers we have marked, under section 552.136 of the Government Code.

In summary, to the extent the named employee timely elected confidentiality for his information pursuant to section 552.024 of the Government Code, the city must withhold information you have marked under section 552.117(a)(1) of the Government Code. The city must withhold the marked utility account numbers pursuant to section 552.136 of the Government Code. 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 338105

Enc. Submitted documents

cc: Requestor
(w/o enclosures)