



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2009

Ms. Andrea Sheehan  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2009-04342

Dear Ms. Sheehan:

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# 338751.

The Red Oak Independent School District (the "district"), which you represent, received a request for e-mails from a member of the district police department containing the names of specified individuals. You state you have released some of the requested information. You claim that the 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.

First, we note that the district failed to raise section 552.117 of the Government Code within the time period prescribed by section 552.301(b) of the Government Code. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Normally, a compelling reason is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.117 can provide compelling a reason to overcome the presumption of openness, we will consider your argument under this exception for the submitted information.

You assert that some of the submitted information is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the current and former home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994).

Section 552.117(a)(2) only applies to records that a governmental body is holding in an employment capacity. In this instance, we note that the information you have marked does not pertain to records that the district is holding in an employment capacity. Accordingly, section 552.117(a)(2) is not applicable to the information you have marked under section 552.117, and no portion of it may be withheld on this basis. However, the district must withhold the information we have marked under section 552.117(a)(2), which the district holds in an employment capacity.

We note that section 552.1175 of the Government Code may be applicable to the information you have marked under section 552.117.<sup>1</sup> This section provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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(a), (b). We note that section 552.1175 also encompasses a personal cellular telephone number, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Accordingly, if the telephone number we have marked constitutes the officer's home telephone number or is a cellular telephone number with service that is not paid for by a governmental body and if the officer elects to restrict access to this information in accordance with section 552.1175(b), then the district must withhold the telephone number that we have marked under section 552.1175. If no election is made, or if the telephone number is not a home telephone number or a cellular telephone number from a service paid for by the officer, then the district must release the telephone number we have marked.

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception such as section 552.1175 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

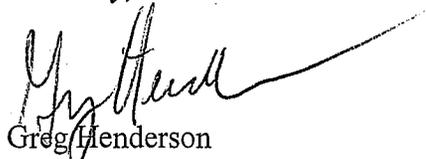
You assert that the e-mail address you have marked is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of 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). The e-mail address you have marked is not of a type specifically excluded by section 552.137(c). Further, you represent that the owner of the email address at issue has not consented to its release. Therefore, the district must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner consents to its release.

In summary, the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the number we have marked constitutes the officer's home telephone number or is a cellular telephone number with service that is not paid for by a governmental body and if the officer elects to restrict access to this information in accordance with section 552.1175(b), then the district must withhold the telephone number that we have marked under section 552.1175. The district must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner consents to its release. 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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID#338751

Enc: Submitted documents

c: Requestor  
(w/o enclosures)