



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2009

Mr. Charles Wallace
Assistant City Attorney
P.O. Box 311747
New Braunfels, Texas 78131

OR2009-07443

Dear Mr. Wallace:

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# 344683.

The City of New Braunfels (the "city") received a request for all information regarding fires at a specified address between June 17, 2007 and March 18, 2009. You state the city has provided some of the requested information to the requestor. You claim portions of the submitted fire incident reports, witness statements, insurance policy, and photographs are excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.132, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim some of the submitted information is protected under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, you have not directed our attention to any law, nor are we aware of any law, that makes any of the submitted information confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code.

You claim some of the submitted information is protected under sections 552.117 and 552.1175 of the Government Code. These sections except from public disclosure the home addresses and telephone numbers, social security numbers, and family member information of specified categories of governmental body employees or officials. *See* Gov't Code §§ 552.117(a), .1175(a)-(b). You have not submitted any arguments explaining how any of the submitted information is excepted under these sections. Furthermore, upon review of the submitted information, we find the information does not contain the home addresses and telephone numbers, social security numbers, or family member information of any persons falling within the specified categories of governmental body employees listed in sections 552.117 and 552.1175. Thus, you have failed to demonstrate these sections apply to the submitted information. Consequently, none of the submitted information may be withheld under section 552.117 or section 552.1175 of the Government Code.

You assert portions of the submitted information are excepted under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Id. § 552.132(b), (d). In this instance, the submitted information is held by the city, rather than the crime victim's compensation division of this office. Therefore, section 552.132(b) is not applicable to this information. Moreover, you have provided no arguments explaining, and there is no indication, any of the information involves a victim who is an employee of the city, so as to be subject to section 552.132(d). We, therefore, conclude the city may not withhold any of the submitted information under section 552.132 of the Government Code.

You claim some of the submitted information is excepted from disclosure under section 552.147 of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ *Id.* § 552.147. Therefore, the city may withhold the social security numbers listed in the submitted information under section 552.147 of the Government Code.

We note the remaining information contains Texas driver’s license and license plate numbers. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.² *Id.* § 552.130(a)(1), (2). Thus, the city must withhold the Texas driver’s license and license plate numbers we have marked in the remaining documents, as well as the license plate numbers in the submitted photographs, under section 552.130 of the Government Code.

The remaining information also contains an insurance policy number. Section 552.136 of the Government Code provides:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Id. § 552.136. We conclude the insurance policy number we have marked constitutes an access device number for purposes of section 552.136. Thus, the city must withhold the

¹We note section 552.147(b) of the Government Code 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.

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

marked insurance policy number in the remaining information under section 552.136 of the Government Code.

The remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which 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). *Id.* § 552.137(a)-(c). The e-mail addresses in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

Finally, we note part of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the remaining information must be released to the requestor in accordance with copyright law.

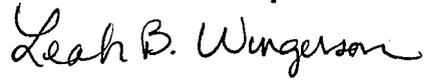
In summary, the city may withhold the social security numbers under section 552.147 of the Government Code. The city must withhold the marked Texas driver's license and license plate numbers, as well as the license plate numbers in the submitted photographs, under section 552.130 of the Government Code; the marked insurance policy number under section 552.136 of the Government Code; and the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining information must be released in accordance with copyright law.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 344683

Enc. Submitted documents

c: Requestor
(w/o enclosures)