



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2010

Ms. Amy Arnold
City Secretary
City of White Settlement
214 Meadow Park Drive
White Settlement, Texas 76108

OR2010-06108

Dear Ms. Arnold:

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# 377275.

The City of White Settlement (the "city") received a request for all e-mails produced or received by the city council's laptop computers and 21 named individuals. You argue that portions of the submitted information should not be released, but you claim no specific exceptions under the Act. We have reviewed the submitted representative sample of information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's obligations under the Act. 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). Although you generally state portions of the submitted information are confidential, you raise no specific exceptions under the Act that you believe apply to the submitted information. *See id.*; Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing which exceptions apply to requested information and why), 532 (1989), 515 (1988), 252 (1980). Accordingly, as you have not complied with section 552.301, the submitted information is presumed public and must be released to the requestor unless a compelling reason for non-disclosure exists. *See* Gov't

Code § 552.302. We note that some of the submitted information may be subject to sections 552.117, 552.136, 552.137, and 552.147 of the Government Code. As these sections can provide compelling reasons for non-disclosure, we will address their applicability to the submitted information.

Next, we note you have sent a representative sample of the requested information for our review. The requestor asserts that the city should "release immediately" any of the requested e-mails that you have not sent to this office. However, we note that in instances where the requested information is voluminous, a governmental body may submit a "representative sample" of information, as long as it is truly representative of the requested records as a whole. Gov't Code § 552.301(e)(1)(D); *see also* Open Records Decision Nos. 499 (1988), 497 (1988). Thus, we will consider the possible exceptions to disclosure for the submitted representative sample of information. However, this open records letter does not reach, and therefore does not authorize the withholding of, any of the requested e-mails to the extent they contain substantially different types of information than those submitted to this office.

We note you have highlighted confidentiality agreements within some of the submitted e-mails between the city and certain third parties. Thus, we understand you to claim these communications are protected from disclosure based on a private agreement between the city and these third parties. We note provisions of the Act cannot be overruled or repealed by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Therefore, the city must release the submitted information unless it falls within the scope of an exception to disclosure under the Act, notwithstanding any expectation or agreement to the contrary. *See* Open Records Decision No. 470 at 2 (1987).

Section 552.117 of the Government Code excepts from public disclosure the social security number 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), .024. 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Accordingly, to the extent the information we have marked pertains to current or former employees who timely elected confidentiality for this information under section 552.024, the city must withhold this information under section 552.117(a)(1). To the extent the marked information does not pertain to a current or former employee or the

individuals at issue did not timely elect confidentiality for their personal information, the city may not withhold the marked information on the basis of section 552.117.

We note the information we have marked under section 552.117 is also subject to section 552.147 of the Government Code. Section 552.147 provides, “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ Gov’t Code § 552.147. Therefore, to the extent the employees at issue did not elect to keep this information confidential, the city may nevertheless withhold it under section 552.147 of the Government Code.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of [the Act], 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(b). Accordingly, the city must withhold the submitted account numbers we have marked under section 552.136 of the Government Code.

Finally, we note that portions of the submitted information are 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). *See* Gov’t Code § 552.137(a)-(c). The personal 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).²

In summary, to the extent the information we have marked pertains to current or former employees who timely elected confidentiality for this information under section 552.024 of the Government Code, the city must withhold this information under section 552.117(a)(1) of the Government Code. Alternatively, in the event this information does not pertain to employees who timely elected confidentiality, the city may nevertheless withhold it under section 552.147 of the Government Code. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their

¹ 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. *See* Gov’t Code § 552.147(b).

² We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including account numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

owners have affirmatively consented to their disclosure. 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, 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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 377275

Enc. Submitted documents

c: Requestor
(w/o enclosures)