



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2012

Mr. Warren M. S. Ernst
Chief
General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2012-02729

Dear Mr. Ernst:

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# 446060 (ORR# 11-00634176).

The City of Dallas (the "city") received a request for nine categories of information pertaining to city Equipment and Building Services employees, including personnel records, water quality tests, and specified work orders. You state the city will provide some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You acknowledge, and we agree, the city failed to comply with the procedural requirements of section 552.301(b) of the Governmental Code in requesting this ruling. *See Gov't Code* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

presumption that the information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.301; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). You assert the submitted information is excepted under sections 552.101 and 552.139 of the Government Code. We note some of the submitted information is subject to sections 552.102 and 552.117 of the Government Code.² Because sections 552.101, 552.102, 552.117, and 552.139 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

You state Exhibit B contains a representative sample of security commission cards and applications for security officer handgun commission that are confidential under section 1702.085 of the Occupations Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 1702.085 of the Occupations Code, which provides as follows:

Records maintained by the [Texas Department of Public Safety (“DPS”)] under this chapter on the home address, home telephone number, driver’s license number, or social security number of an applicant or a license holder, registrant, or security officer commission holder are confidential and are not subject to mandatory disclosure under [the Act].

Occ. Code § 1702.085. The information at issue is not maintained by DPS. Thus, we conclude section 1702.085 is not applicable and the city may not withhold the information at issue under section 552.101 in conjunction with section 1702.085 of the Occupations Code.

You also raise section 552.139(b)(3) of the Government Code for the photographs on the submitted commission cards issued by DPS and an employee’s application for security officer handgun commission. Section 552.139(b)(3) provides:

(b) The following information is confidential:

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

...

(3) a photocopy or other copy of an identification badge issued to an official or employee of a governmental body.

Gov't Code § 552.139(b)(3). Section 552.139(b)(3) applies to an identification badge issued to an employee by a governmental body. The legislative history of section 552.139(b)(3) explains that an employee's security clearance information is encoded into his or her employee badge and that the badge, "which contains the employee's photograph, identification number, and job title, could be used to illegally obtain and/or make a replacement of the badge to gain access to secured areas of local and state government facilities[.]" Senate Research Center, Bill Analysis, S.B. 1638, 82nd Leg., R.S. (2011) (enrolled version). You seek to withhold employees' photographs from the submitted commission cards and application. We note the submitted commission cards are licenses issued by DPS under chapter 1702 of the Occupations Code and serve to entitle a person to operate as a security services contractor. Upon review, we find the submitted commission cards issued by DPS and the employee application for security handgun commission do not constitute employee identification badges for purposes of section 552.139(b)(3). Consequently, the city may not withhold any of the information at issue under section 552.139(b)(3) of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find the information we have marked must be withheld under section 552.102(a) of the Government Code.

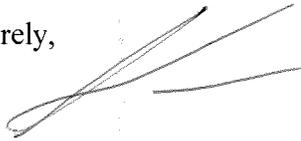
Section 552.117(a)(5) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a commissioned security officer as defined by section 1702.002 of the Occupations Code, regardless of whether the officer complies with section 552.024 or section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(5); Open Records Decision No. 622 (1994). Accordingly, the city must withhold the information pertaining to the commissioned security officer we have marked under section 552.117(a)(5).

In summary, the city must withhold the information we have marked under (1) section 552.102(a) of the Government Code and (2) section 552.117(a)(5) of the Government Code. The city must release the remaining information.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 446060

Enc. Submitted documents

c: Requestor
(w/o enclosures)