



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2013

Mr. Ray Rodriguez
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2013-06870

Dear Mr. Rodriguez:

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# 483654 (COSA File No. W012715-011813).

The City of San Antonio (the "city") received a request for communications sent or received by three named individuals concerning Nexolon America or Nexolon Co. Ltd. (collectively, "Nexolon"), as well as communications sent or received by the same named individuals concerning the Brooks City Base or the Brooks Development Authority (the "BDA") for a specified period of time. You state the city has made or will make some information available to the requestor. You claim some of the requested information is excepted from disclosure under sections 552.105, 552.106, 552.107, 552.111, and 552.131 of the Government Code.¹ You also state you notified Nexolon, an interested third party, of the city's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Nexolon, in

¹Although the city also marked some of the submitted information under rule 503 of the Texas Rules of Evidence, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 (2002).

correspondence to this office, asserts some of its information is excepted from disclosure under sections 552.110(b) and 552.131(a)(2) of the Government Code. We have also considered comments submitted by BDA, which raises sections 552.101, 552.106, 552.107, and 552.131 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because it was created after the city received the request. 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 this information, which we have marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Next, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-17393 (2012). In Open Records Letter No. 2012-17393, we determined the following: the city (1) may withhold some of the information at issue under sections 552.111 and 552.131(b) of the Government Code; (2) must withhold information under section 552.117(a)(1) of the Government Code if the individuals at issue requested confidentiality under section 552.024 of the Government Code and, for the marked cellular telephone numbers, the cellular telephone services were not paid for by a governmental body; (3) must withhold e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release; and (4) must release the remaining responsive information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2012-17393 as a previous determination and withhold or release the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2012-17393, we will address the arguments raised against disclosure.

We next note Nexolon has submitted information to this office it asserts is excepted from release under the Act. However, the city did not submit this information for our review. This ruling does not address information beyond what the city has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this

²We 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.

ruling is limited to the information the city submitted as responsive to the request for information. *See id.*

The submitted information contains information that is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Id. § 552.022(a)(1), (3). The city and BDA assert the information subject to section 552.022 is excepted from release under sections 552.106, 552.111, and 552.131(b) of the Government Code. However, these sections are discretionary and do not make information confidential under the Act. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111), 564 (1990) (statutory predecessor to section 552.105 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 under section 552.105, 552.106, or 552.131(b). The city also raises section 552.131(a) of the Government Code for this information. Although section 552.131(a) does make information confidential under the Act, this section only protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. Therefore, the city may not withhold the information subject to section 552.022 on that ground. As no further exceptions are raised for the information subject to section 552.022, which we have marked, the city must release this information to the requestor.

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 other statutes make confidential. Section 551.104 of the Government Code provides in relevant part, “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” *Id.* § 551.104(c). Thus, such information cannot be

released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to section 552.101). However, other records related to a closed meeting, other than a certified agenda or tape recording, are not made confidential by chapter 551 of the Government Code. *See* Open Records Decision Nos. 605 at 2-3 (1992) (section 551.074 does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session), 485 at 9-10 (1987) (investigative report not excepted from disclosure under statutory predecessor to section 552.101 simply by virtue of its having been considered in executive session); *see also* Attorney General Opinion JM-1071 at 3 (1989) (statutory predecessor to section 551.146 did not prohibit members of governmental body or other individuals in attendance at executive session from making public statements about subject matter of executive session).

BDA asserts any requested information shared with its board of directors in executive sessions, including presentations summarizing the financial details, terms under negotiation, and the status of negotiations, is confidential under section 551.104(c) of the Government Code. However, upon review, we find BDA has not established any of the submitted information consists of a certified agenda or tape recording of a closed meeting. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The city explains the information it marked under section 552.107 consists of confidential communications between an attorney for the city and city employees and representatives of other governmental bodies concerning a matter of common interest. *See* TEX. R. EVID. § 503(b)(1). It states these communications were made in furtherance of the rendition of professional legal services. It also asserts the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find the city has demonstrated the applicability of the attorney-client privilege to some of the submitted information, which we have marked. Therefore, the city may withhold from release the

information we have marked under section 552.107(1) of the Government Code.³ However, we note the remaining information you have marked under section 552.107 consists of communications with representatives of Nexolon, with which the city was in negotiations at the time the communications were made. Upon review, we find the city has not established it shared a common interest with Nexolon that would allow the attorney-client privilege to apply to those communications at the time the communications with Nexolon were made. *See id.* 503(b)(1)(c); *In re Monsanto*, 998 S.W.2d 917, 922 (Tex. App.—Waco 1999, orig. proceeding) (discussing “joint-defense” privilege incorporated by rule 503(b)(1)(C)). Therefore, the city may not withhold the remaining information at issue from release under section 552.107.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the entities between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See id.* For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561. We note a governmental body does not have a privity of interest or common deliberative process with a private party with which the governmental body is engaged in contract negotiations. *See id.* (Gov't Code § 552.111 not applicable to communication with entity with which governmental body has no privity of interest or common deliberative process).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor of section 552.111). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

The city contends some of the remaining information consists of advice, opinions and recommendations from the city's internal departments and private consultants for the city to aid in the policymaking decisions or in making recommendations to its governing body regarding the economic development projects involving Nexolon. The city also explains it is working with other governmental bodies, which include BDA, regarding the development projects at issue. Further, we understand some of this information consists of drafts of documents that will be released in their final form. Based on the city's representations and our review, we find the city may withhold the information we have marked under section 552.111 of the Government Code.⁴ However, we find some of the remaining information at issue to be general administrative information or purely factual in nature. It has not been explained how this information constitutes internal advice, recommendations, or opinions regarding policymaking issues. Additionally, some of this information has been communicated with Nexolon and other third parties. The communications with Nexolon

⁴As our ruling is dispositive, we do not address the other arguments to withhold this information.

relate to contract negotiations between it and the city and related governmental bodies. Because the city and related governmental bodies and Nexolon were negotiating contracts, their interests were adverse at the time the communications were made. Further, it has not been explained how the city or BDA shares a privity of interest or common deliberative process with Nexolon or the other third parties. Therefore, we find section 552.111 is not applicable to the remaining information at issue. Accordingly, the city may not withhold any of the remaining information under section 552.111 of the Government Code.

The city and BDA assert some of the remaining information is excepted from disclosure under section 552.131(b) of the Government Code, which provides the following:

Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure]

Gov't Code § 552.131(b). Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. The city informs us the information at issue pertains to negotiations over economic incentives for Nexolon to establish a corporate headquarters at Brooks City-Base. You inform us the negotiations were pending on the date the city received the request for information. BDA also argues that if a prospective business was able to obtain this information, it would be better able to negotiate more favorable terms from competing sites and negotiate more concessions from BDA. Based on our review of the submitted representations and information, we agree portions of the remaining documents consist of information about financial or other incentives being offered to business prospects. Accordingly, the city may withhold the information we have marked under section 552.131(b) of the Government Code. However, we conclude it has not been demonstrated how any of the remaining information at issue consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the remaining information may be withheld under section 552.131(b) of the Government Code.

Section 552.105 of the Government Code excepts from disclosure information relating to

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. We note this provision is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See Open Records*

Decision Nos. 564 at 2 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310 at 2. A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular transactions.’” *Open Records Decision Nos. 357 at 3, 222 (1979)*. The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564. The city generally states section 552.105 applies to some of the remaining information. However, we find the city has not demonstrated how any of the remaining information at issue pertains to the location, appraisal, or purchase price of real or personal property to be purchased by a governmental body for a public purpose. *See* ORD 310 (statutory predecessor to section 552.105 protects information relating to the location, appraisals, and purchase price of property to be purchased by governmental body for public purpose). Accordingly, the city may not withhold any of the remaining information at issue under section 552.105 of the Government Code.

Section 552.106 of the Government Code excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation.” Gov’t Code § 552.106(a). Section 552.106 of the Government Code resembles section 552.111 in that both exceptions protect advice, opinion, and recommendation on policy matters in order to encourage frank discussion during the policymaking process. *See* *Open Records Decision No. 460 at 2 (1987)*. However, section 552.106 applies specifically to the legislative process and is narrower than section 552.111. *Id.* Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* Section 552.106 does not protect purely factual information from public disclosure. *See id.*; *see also* *Open Records Decision No. 344 at 3-4 (1982)* (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). Upon review of the city’s and BDA’s arguments, we find they have not demonstrated how any of the remaining responsive information pertains to the preparation of proposed legislation. Accordingly, the city may not withhold any of the remaining information under section 552.106 of the Government Code.

BDA and Nexolon assert some of the remaining information is excepted from disclosure under section 552.110(b) of the Government Code. However, section 552.110(b) protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. Accordingly, we consider only the arguments we received from Nexolon under section 552.110(b). Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on

specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm). Upon review, we find Nexolon has made only conclusory allegations that release of the information at issue would cause it substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov’t Code § 552.110(b). Therefore, the city may not withhold any of the information pursuant to section 552.110(b) of the Government Code.

Nexolon asserts some of its information is excepted under section 552.131(a)(2) of the Government Code, which reads as follows:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

...

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Id. § 552.131(a)(2). Thus, in excepting from disclosure only “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained,” section 552.131(a)(2) provides the same protection as section 552.110(b). *See id.* § 552.110(b); Open Records Decision No. 661 (1999). Therefore, as we have already determined section 552.110(b) of the Government Code is not applicable to any of the information at issue, the city may not withhold any of the remaining information under section 552.131(a)(2) of the Government Code.

Section 552.117 of the Government Code may also be applicable to some of the submitted information.⁵ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 be withheld under section 552.117(a)(1) only 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.

We have marked information pertaining to city employees under section 552.117(a)(1), including a representative sample of a portion of the submitted cellular telephone numbers. Therefore, if the city employees whose information is at issue, a representative sample of which we have marked, timely requested confidentiality under section 552.024 and the cellular telephone services are not paid for by a governmental body, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the individuals whose information is at issue did not make timely elections under section 552.024 or if the cellular telephone services are paid for by a governmental body, the city may not withhold this information under section 552.117(a)(1) of the Government Code.

We have also marked information under section 552.117(a)(1) that pertains to board members of BDA, including a representative sample of a portion of the submitted cellular telephone numbers. We note this office has applied the interagency transfer doctrine to conclude information made confidential under section 552.117(a)(1) of the Government Code remains confidential upon transfer to another governmental body. *See* Open Records Decision No. 674 at 4-5 (2001); *see also* Open Records Decision No. 516 (1989) (Department of Public Safety did not violate confidentiality under predecessor of section 552.117(2) by transferring police officer's home address to Attorney General's Child Support Enforcement Office). If the BDA board members at issue timely requested confidentiality under section 552.024 and the cellular telephone services are not paid for by a governmental body, their information in the custody of BDA was confidential under section 552.117(a)(1). Pursuant to the intergovernmental transfer doctrine, the information remains confidential upon the transfer of this information to the city. Thus, in order to ascertain whether the personal information of the board members is confidential and cannot lawfully be released to the public, the city must inquire with BDA as to whether the individuals elected under section 552.024 to keep confidential their personal information and the cellular telephone services are not paid for by a governmental body. If so, then the city must withhold the information pertaining to these individuals, a representative sample of which we have marked, under section 552.117(a)(1).

Section 552.137 of the Government Code exempts 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). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. We have marked a representative sample of e-mail addresses of members of the public that the city must withhold under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.

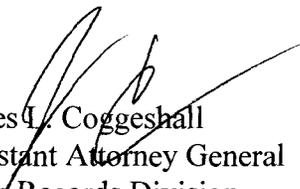
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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.

We conclude the following: the city (1) must continue to rely on Open Records Letter No. 2012-17393 as a previous determination and withhold or release the information in accordance with that ruling; (2) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) may withhold the information we have marked under sections 552.107(1), 552.111, and 552.131(b) of the Government Code; (4) must withhold the information pertaining to city employees, a representative sample of which we have marked, under section 552.117(a)(1) of the Government Code if they timely requested confidentiality under section 552.024 of the Government Code; however, the city may only withhold the cellular telephone numbers at issue under section 552.117(a)(1) if they were not paid for by a governmental body; (5) must withhold the information pertaining to BDA board members, a representative sample of which we have marked, under section 552.117(a)(1) of the Government Code if, after inquiring with BDA, the city determines they also timely requested confidentiality under section 552.024 of the Government Code; however, the city may only withhold the cellular telephone numbers at issue under section 552.117(a)(1) if they were not paid for by a governmental body; (6) must withhold the e-mail addresses in the remaining information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release; and (7) must release the remaining responsive information, but may only release any copyrighted information 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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 483654

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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