



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2014

Ms. Janet L. Kellogg
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2014-15503

Dear Ms. Kellogg:

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# 535238 (ORR# 342).

The City of Corpus Christi (the "city") received a request for information pertaining to a specified bond project.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office

¹We note the city asked the requestor to narrow his request, and the requestor declined to do so. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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.

whether requested information is excepted from public disclosure. Subsection 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Subsection 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e). You state the city received the instant request for information on April 22, 2014. You state the city requested clarification of the request on May 5, 2014, and received a response on the same date. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We note May 26, 2014 was a holiday. Thus, the city's ten-business day deadline was May 19, 2014, and the city's fifteen-day business deadline was May 27, 2014. However, you did not request a ruling from this office or submit any of the information required by subsections 552.301(b) and (e) until June 27, 2014. *See id.* § 552.301(b), (e). You state the city notified the requestor, pursuant to section 552.221(d) of the Government Code, the city needed additional time to retrieve the requested records and the city anticipated obtaining the documents by June 26, 2014. Section 552.221(d) provides when a governmental body must make information available to a requestor if the governmental body certifies it cannot do so within ten business days of receiving the request. *See id.* § 552.221(d). However, section 552.221(d) does not affect the deadlines imposed on a governmental body under section 552.301. Thus, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.107 and 552.111 of the Government Code for the submitted information, these sections are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Thus, the city has waived its claims under sections 552.107 and 552.111 for the

submitted information. However, we note portions of the submitted information are subject to sections 552.117 and 552.137 of the Government Code, which make information confidential under the Act.³ Accordingly, we will consider the applicability of these exceptions to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. We note section 552.117(a)(1) is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for the information was made. Accordingly, the city must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) if the employees whose information is at issue timely elected to keep their information confidential pursuant to section 552.024, and provided the cellular telephone services are not paid by a governmental body. The city may not withhold this information under section 552.117 if the employees did not timely elect to keep their information confidential or if the cellular telephone services are paid by a governmental body.

Section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). Upon review, we find the city must withhold the personal e-mail addresses contained in the remaining information under section 552.137 of the Government Code, unless the e-mail addresses are excluded by subsection (c) or the owners affirmatively consent to their public disclosure.

We note some of the remaining information 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

³The 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)*.

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.

In summary, the city must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code, to the extent the employees whose information is at issue timely elected to keep their information confidential pursuant to section 552.024 of the Government Code and the cellular telephone services are not paid by a governmental body. The city must withhold the personal e-mail addresses in the submitted information under section 552.137 of the Government Code, unless the e-mail addresses are subject to subsection (c) or the owners affirmatively consent to their public disclosure. The remaining information must be released, but the city must release any information subject to copyright only 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 535238

Enc. Submitted documents

c: Requestor
(w/o enclosures)