



January 30, 2015

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2015-01904

Dear Ms. Silver:

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# 550161.

The City of Dallas (the "city") received a request for all correspondence sent to or received by three named individuals that include a specified term and for a specified time period.¹ You state you will release some information to the requestor pending payment of costs. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information, portions of which consist of representative samples.³

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that 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).

²Although you also raise Texas Rule of Evidence 503, 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 No. 676 at 1-2 (2002).

³We assume the "representative samples" 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.

Initially, we note portions of the information you have submitted are not responsive to the request at issue because they were created after the specified time period, or are communications that do not include the individuals named in the request. Thus, this information is not responsive to the request. This ruling does not address the public availability of that information, and the city need not release any non-responsive information.

Next, we note portions of the requested information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2014-23179 (2014), 2014-23242 (2014), 2015-00030 (2015), 2015-01171 (2015), 2015-01224 (2015), 2015-01234 (2015), 2015-01235 (2015), 2015-01240 (2015), and 2015-01354 (2015). There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the requested information that 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 Nos. 2014-23179, 2014-23242, 2015-00030, 2015-01171, 2015-01224, 2015-01234, 2015-01235, 2015-01240, and 2015-01354 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Next, we address your arguments against the disclosure of the submitted information that is not subject to these prior rulings.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. The city raises section 552.101 in conjunction with section 81.046 of the Health and Safety Code. This section is part of the Communicable Disease Prevention and Control Act, chapter 81 of the Health and Safety Code. *See* Health & Safety Code § 81.001. Section 81.046 provides, in part, the following:

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(b). You state the submitted information pertains to investigations of cases or suspected cases of Ebola within the city. Upon review, we agree section 81.046 governs the release of portions of the submitted information. We have no indication any of the release provisions of section 81.046 are applicable. Accordingly, the city must withhold the information we have marked under section 552.101 of the

Government Code in conjunction with section 81.046 of the Health and Safety Code.⁴ However, we find none of the remaining responsive information specifically relates to cases or suspected cases of diseases or health conditions for purposes of section 81.046. Accordingly, the city may not withhold any of the remaining responsive information at issue under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

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.⁵ *See* Gov't Code § 552.117(a)(1). We note section 552.117 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) (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 employee or official 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 note the remaining responsive information contains the cellular telephone numbers of city employees. Accordingly, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the cellular telephone numbers in the remaining responsive information under section 552.117(a)(1) of the Government Code, so long as the cellular telephone service is not paid for by a governmental body.

Section 552.137 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). We note the remaining responsive information contains personal e-mail addresses subject to section 552.137 of the Government Code. Therefore, the city must withhold the personal e-mail addresses in the submitted information under section 552.137 of the Government Code, unless their owners affirmatively consent to their release.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

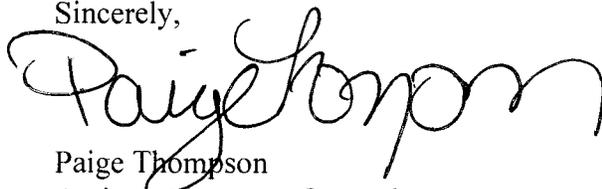
⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter 2014-23179, 2014-23242, 2015-00030, 2015-01171, 2015-01224, 2015-01234, 2015-01235, 2015-01240, and 2015-01354, the city must rely on such prior rulings as previous determinations and withhold or release the identical information in accordance with those rulings. To the extent any of the submitted information was not at issue in any of the prior rulings, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the cellular telephone numbers in the remaining responsive information under section 552.117(a)(1) of the Government Code, so long as the cellular telephone service is not paid for 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 their owners affirmatively consent to their release. The city must release the remaining responsive 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.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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/cbz

Ref: ID# 550161

Enc. Submitted documents

c: Requestor
(w/o enclosures)