



February 27, 2015

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2015-03925

Dear Ms. Sims:

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# 556255 (Lubbock File No. 1073).

The City of Lubbock (the "city") received a request for information pertaining to the requestor, including the requestor's application, interviews, background check, and personal history statements. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the request for information pertaining to the requestor's interviews. To the extent any information responsive to this portion of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

¹Although you also raise section 552.108 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

Section 552.101 of the Government Code exempts 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 protected by section 143.089 of the Local Government Code. Section 143.089(a) of the Local Government Code requires the civil service director to maintain a personnel file on each "police officer." Likewise, section 143.089(g) states that a police department may maintain its own personnel file on each "police officer." Both subsections refer to "police officer." Section 143.003 defines a police officer as a member of a police department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under section 143.005, 143.084, or 143.103. *See* Loc. Gov't Code § 143.003(5) (defining "police officer" for purposes of section 143.089). We note in this instance, the individual to whom the submitted information pertains was not hired by the city. Thus, the individual at issue was not appointed in substantial compliance with chapter 143, and therefore is not entitled to the rights and privileges of Chapter 143 of the Local Government Code. Accordingly, the city may not withhold any of the submitted information under section 552.101 in conjunction with section 143.089 of the Local Government Code.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 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). Some of the submitted information pertains to peace officers not employed by the city. Thus, if the information we marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175; however, the city may not withhold the marked cellular telephone number under section 552.1175 if a governmental body does not pay for the cellular telephone service. If the individuals whose information we marked are no longer licensed peace officers or no election is made, the city may not withhold this information under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must

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, 480 (1987), 470 (1987).

withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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 generally withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. We note, however, the requestor is the spouse of one of the individuals whose e-mail address is at issue, and may be acting as her authorized representative. Therefore, the requestor may have a right of access to his spouse’s e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Accordingly, if the requestor is his spouse’s authorized representative, then he has a right of access to her e-mail address, and that information may not be withheld from this requestor under section 552.137 of the Government Code. If the requestor is not his spouse’s authorized representative, then the city must withhold her e-mail address under section 552.137 of the Government Code.

In summary, if the information we marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we marked under section 552.1175 of the Government Code; however, the city may not withhold the marked cellular telephone number under section 552.1175 if a governmental body does not pay for the cellular telephone service. The city must withhold the information we marked under section 552.130 of the Government Code. The city must generally withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. If the requestor is his spouse’s authorized representative, then her e-mail address must be released to the requestor. The city must release the remaining information.³

³We note the requestor has a special right of access to some of the information being released in this instance. *See Gov’t Code* § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party’s representative, solely on grounds that information is considered confidential by privacy principles). We further note the information being released includes the requestor’s spouse’s social security number. 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 an attorney general decision under the Act. *See id.* § 552.147(b). However, as noted above, the requestor may be the authorized representative of his spouse. Because section 552.147 protects personal privacy, the requestor may have a right of access to his spouse’s private information under section 552.023 of the Government Code. *See generally id.* § 552.023(a); ORD 481 at 4. Therefore, if the requestor is the authorized representative of his spouse, then his spouse’s social security number must be released to the requestor. If the requestor is not his spouse’s authorized representative, this social security number may be withheld under section 552.147(b) of the Government Code. In either case, the city may withhold the partial social security number of the requestor’s former spouse under section 552.147(b) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style with a large initial "P" and a long, sweeping underline.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 556255

Enc. Submitted documents

c: Requestor
(w/o enclosures)