



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2015

Ms. Monica L. Perez
Counsel for the City of Socorro
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2015-05510

Dear Ms. Perez:

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# 557541.

The City of Socorro (the "city"), which you represent, received a request for (1) the investigative file related to a specified hearing involving the requestor's client, (2) all cellular telephone records for the requestor's client's city-issued cellular telephone during a specified time period, (3) all memoranda or communications related to the demotion of the requestor's client, and (4) the internet browsing history for specified computers used by two named individuals during a specified time period. You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

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

Gov't Code § 552.022(a)(3). The submitted information consists of the cellular telephone bill statements for a city-provided cellular telephone, which contain information in an account, voucher, or contract relating to the expenditure of public funds. Accordingly, section 552.022(a)(3) is applicable to the submitted information. Information subject to section 552.022(a)(3) may be withheld only if it is made confidential under the Act or other law. *See id.* You argue the submitted information is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Accordingly, we conclude the city may not withhold any portion of the submitted information under section 552.108 of the Government Code. However, because sections 552.101, 552.117, 552.136, and 552.152 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted information.¹

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 the common-law physical safety exception. We understand you to contend the submitted information is excepted from required disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

You assert release of the submitted information would reveal the cellular telephone numbers of employees tasked with law enforcement duties. You state release of this information “may subject the officers to unnecessary harassment, threats, and interfere with the ability to communicate with these officers in emergency situations.” However, upon review, we find you have failed to demonstrate how release of any portion of the submitted information would create a substantial threat of physical harm to the employees at issue. Accordingly,

¹The 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).

the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is 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). The submitted cellular telephone statements may contain home or personal cellular telephone numbers belonging to licensed peace officers or to family members of licensed peace officers. We are unable to determine whether a governmental body pays for the cellular telephone service for any of the numbers at issue. Thus, to the extent any of the telephone numbers in the submitted information consist of home or personal cellular telephone numbers belonging to licensed peace officers or to the family members of licensed peace officers, the city must generally withhold such information under section 552.117(a)(2); however, any cellular telephone numbers may be withheld only if a governmental body does not pay for the telephone service.² However, we note section 552.117 protects personal privacy. Therefore, the requestor has a right of access to his client's personal information under section 552.023 of the Government Code, and such information may not be withheld from him under section 552.117. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves).

If any of the remaining telephone numbers in the submitted information consist of home or personal cellular telephone numbers belonging to current or former employees of the city who are not licensed peace officers or to the family members of these employees, then such information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 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). 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,

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information may be withheld under section 552.117(a)(1) only on behalf of a current or former 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. As noted above, section 552.117 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Therefore, to the extent the remaining information consists of home or personal cellular telephone numbers belonging to current or former employees of the city or their family members, and the current or former employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must generally withhold such information under section 552.117(a)(1) of the Government Code; however, any cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.³ To the extent the current or former employees at issue did not timely request confidentiality under section 552.024, the city may not withhold the cellular telephone numbers at issue under section 552.117(a)(1). Further, as noted above, section 552.117 protects personal privacy. Therefore, the requestor has a right of access to his client's personal information under section 552.023 of the Government Code, and such information may not be withheld from him under section 552.117. *See* Gov't Code § 552.023(a); ORD 481 at 4.

Some of the remaining information is subject to section 552.136 of the Government Code. Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the account number we have marked under section 552.136 of the Government Code.⁴

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You assert release of the remaining information would reveal the cellular telephone numbers of employees tasked with law enforcement duties. You state

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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

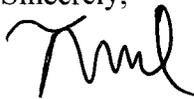
release of this information “may subject the officers to unnecessary harassment, threats, and interfere with the ability to communicate with these officers in emergency situations.” Upon review of your representations and the submitted information, we find you have not demonstrated how release of the remaining information would subject an employee or officer of the city to a substantial risk of physical harm. Accordingly, the city may not withhold the remaining information under section 552.152 of the Government Code.

In summary, to the extent any of the telephone numbers in the submitted information consist of home or personal cellular telephone numbers belonging to licensed peace officers or their family members, the city must withhold such information under section 552.117(a)(2) of the Government Code; however, the city must release the requestor’s client’s personal information. To the extent the remaining information consists of home or personal cellular telephone numbers belonging to current or former employees of the city or their family members, and the current or former employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold such information under section 552.117(a)(1) of the Government Code; however, the city must release the requestor’s client’s personal information. Furthermore, any cellular telephone numbers may be withheld under section 552.117(a)(2) or 552.117(a)(1) of the Government Code only if a governmental body does not pay for the cellular telephone service. The city must withhold the account number we have marked under section 552.136 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 557541

Enc. Submitted documents

c: Requestor
(w/o enclosures)