



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 5, 2015

Mr. Lance Vincent  
Counsel for the City of East Mountain  
Ritcheson, Lauffer & Vincent, P.C.  
Two American Center  
821 ESE Loop 323, Suite 530  
Tyler, Texas 75701

OR2015-11054

Dear Mr. Vincent:

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# 566282.

The City of East Mountain (the "city"), which you represent, received a request for the phone records of a named city official during a specified time period. You claim some of the submitted information is excepted from disclosure under section 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments

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<sup>1</sup>Although you raise section 552.152 of the Government Code for the submitted information, you provide no arguments or markings explaining how this exception is applicable. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302. Further, although you raise section 552.305, we note this section is not an exception to public disclosure under the Act. *See id.* §§ 552.024, .301, .305.

<sup>2</sup>We 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.

from the requestor.<sup>3</sup> *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>4</sup> *Id.* § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988). Therefore, the city must withhold the information we have marked and any home or personal cellular telephone numbers of peace officers or their family members under section 552.117(a)(2) of the Government Code; however, the city may only withhold the personal cellular telephone numbers at issue if the cellular telephone service is not paid for by a governmental body.<sup>5</sup> In addition, we conclude section 552.117(a)(2) is not applicable to the remaining information, and the city may not withhold it on that ground.

Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). As previously noted, section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *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. Information may not be withheld under

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<sup>3</sup>We note the requestor asserts the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, sections 552.117 and 552.1175 are mandatory exceptions that constitute compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the applicability of these exceptions to the submitted information.

<sup>4</sup>Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

<sup>5</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the remaining submitted information contains the home or personal cellular telephone numbers of city employees who made timely elections under section 552.024 of the Government Code or telephone numbers of family members of city employees who made timely elections, the telephone numbers must be withheld under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers at issue if the cellular telephone service is not paid for by a governmental body.

The remaining submitted information may also contain personal telephone numbers belonging to peace officers who are not employed by the city. Section 552.1175 of the Government Code 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. 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 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Thus, to the extent any of the telephone numbers in the submitted information belong to a licensed peace officer not employed by the city who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the city must withhold the telephone number under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services.

Section 552.136 of the Government Code states "[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."<sup>6</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Thus, the city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked and any home or personal cellular telephone numbers of peace officers or their family members under section 552.117(a)(2) of the Government Code; however, the city may only withhold the personal cellular telephone numbers at issue if the cellular telephone service is not paid for by a governmental body. To the extent the remaining submitted information contains the home or personal cellular telephone numbers of city employees who made timely elections under section 552.024 of the Government Code or telephone numbers of family members of city employees who made timely elections, the telephone numbers must be withheld under

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<sup>6</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers at issue if the cellular telephone service is not paid for by a governmental body. To the extent any of the telephone numbers in the remaining submitted information belong to a licensed peace officer not employed by the city who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the city must withhold the telephone number under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. The city must withhold the information 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/dls

Ref: ID# 566282

Enc. Submitted documents

c: Requestor  
(w/o enclosures)