



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Mr. James T. Jeffrey, Jr.
Counsel for the City of Dalworthington Gardens
Law Offices of Jim Jeffrey
2214 Park Springs Boulevard
Arlington, Texas 76013

OR2015-15972

Dear Mr. Jeffrey:

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# 574997.

The Dalworthington Gardens Police Department (the "department"), which you represent, received a request for information pertaining to male department employees employed by the department during a specified time period. You state you do not have information responsive to a portion of the request.¹ You state you have released some information to the requestor. You claim a portion of the submitted information is excepted from disclosure under sections 552.117, 552.119, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone numbers, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. However, we find the remaining information at issue is not subject to section 552.117(a)(2), and it may not be withheld on that basis.

To the extent the cellular telephone numbers we have marked are not subject to section 552.117(a)(2) of the Government Code, we will address your argument under section 552.152 of the Government Code for this information. Section 552.152 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. Upon review, we find you have not demonstrated the release of the information at issue would subject an employee of the department to a substantial threat of physical harm. Thus, the department may not withhold any of the information at issue under section 552.152 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).² *See id.* § 552.137(a)-(c). Upon review, we find the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.³

In summary, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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

governmental body. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 574997

Enc. Submitted documents

c: Requestor
(w/o enclosures)