



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Mr. Edgar J. Garrett, Jr.  
Counsel for the City of Commerce  
Faires & Garrett, Attorneys at Law  
1109 Main Street  
Commerce, Texas 75428-2605

OR2015-25657

Dear Mr. Garrett:

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# 589762.

The City of Commerce (the "city") received two requests from different requestors for (1) the phone records of certain named individuals from a specified time period, (2) a specified audio recording, and (3) any and all information pertaining to the "BSC Board." You claim the submitted information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the city has submitted only the specified phone records. To the extent any information responsive to the remainder of the request at issue existed on the date the city received the request, we assume the city has released it to the respective requestor. If the city has not released any such information to that requestor, 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

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<sup>1</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.

body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the city received the requests for information on September 15, 2015, and September 16, 2015, respectively. Accordingly, the city's fifteen-business-day deadlines were October 6, 2015, and October 7, 2015, respectively. However, the city did not submit a copy or representative sample of the requested information as required by section 552.301(e) until October 16, 2015. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the city raises section 552.108 of the Government Code, section 552.108 is a discretionary exception that protects only a governmental body's interests and may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city may not withhold the submitted information under section 552.108 of the Government Code. However, because section 552.117 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

You indicate the phone records at issue contain the home phone numbers of city police officers. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Upon review, to the extent the phone records at issue pertain to licensed city peace officers, the city must withhold the peace officers' home phone numbers under section 552.117(a)(2) of the Government Code. Conversely, to the extent the records at issue do not pertain to licensed city peace officers, the city may not withhold the information at issue under section 552.117(a)(2).

To the extent the phone records at issue pertain to city employees who are not licensed peace officers, the records may be excepted under 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 or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.<sup>2</sup> 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, 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 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. The city indicates the submitted phone records contain the home phone numbers of city employees. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold those employees' home phone numbers under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the city may not withhold the home phone numbers at issue under section 552.117(a)(1).

In summary, to the extent the phone records at issue pertain to licensed city peace officers, the city must withhold the peace officers' home phone numbers under section 552.117(a)(2) of the Government Code. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold those employees' home phone numbers under section 552.117(a)(1) of the Government Code. The city must release the remaining information.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 589762

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)