



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 28, 2015

Mr. Matthew Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-27069

Dear Mr. Grove:

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# 592216.

The Fort Bend County Attorney's Office (the "county attorney's office") received a request for all correspondence involving five named individuals pertaining to four specified terms over a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the county attorney's office's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, the county attorney's office states, and submits documentation demonstrating, it received the request for information after business hours on September 27, 2015. Therefore, the county attorney's office received the request for information on September 28, 2015. This office does not count the date the request was received or holidays the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. You do not inform us the county attorney's office was closed for business between September 28, 2015 and October 12, 2015.

Accordingly, the county attorney's office's ten-business-day deadline was October 12, 2015. However, the envelope in which the county attorney's office submitted the information required by section 552.301(b) bears a meter-mark of October 13, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the county attorney's office failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of 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 county attorney's office claims the submitted information is excepted from disclosure under sections 552.103 and 552.107, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the county attorney's office has waived its claims under sections 552.103 and 552.107 for the submitted information. However, we note the submitted information contains information subject to sections 552.117 and 552.137 of the Government Code.¹ Sections 552.117 and 552.137 make information confidential and can provide compelling reasons to overcome the presumption of openness. As such, we will address the applicability of these exceptions to the submitted information.

Section 552.117(a)(1) of the Government Code 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. *See Gov't Code* § 552.117(a)(1). We note section 552.117 is also applicable to

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).

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). 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. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the county attorney's office may only withhold the marked cellular telephone numbers if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024, then the county attorney's office may not withhold any of the information at issue under section 552.117(a)(1).

Section 552.137 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* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the county attorney's office must withhold the e-mail addresses we have indicated in the submitted information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or if subsection (c) applies.

In summary, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the county attorney's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the county attorney's office may only withhold the marked cellular telephone numbers if a governmental body does not pay for the cellular telephone service. The county attorney's office must withhold the e-mail addresses we have indicated under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or if subsection (c) applies. The remaining information must be released.

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 'Thana Hussaini', with a stylized flourish at the end.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 592216

Enc. Submitted documents

c: Requestor
(w/o enclosures)