



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2016

Mr. Jeffrey C. Monk
Administration Manager
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

Ms. Kristie L. Lewis
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2016-28404

Dear Mr. Monk and Ms. Lewis:

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# 639361 (ORU No. 16-7901).

The Houston Police Department (the "department") received a request for (1) contracts and training documents containing specified words, (2) e-mails pertaining to specified subject matter between department employees, and (3) any e-mail address ending in a specified domain during a specified time period. You state you have no information responsive to a portion of the request.¹ You state you will release some information. You assert some of the submitted information is not subject to the Act. You also claim some of the submitted

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

information is excepted from disclosure under section 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you contend the submitted Internet Protocol ("IP") addresses are not subject to the Act. The Act is applicable only to "public information." Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as:

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined that certain computer information such as source codes, documentation information and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor to Act). We understand you to assert the department's IP addresses have no significance other than their use as tools for the maintenance, manipulation, or protection of public property. We disagree. The information at issue pertains to the use of department computers and networks by department employees. Thus, we find the department's IP addresses do have public significance other than their use as tools for the maintenance, manipulation, or protection of public property. Accordingly, we find the information at issue is public information subject to the Act. As you raise no exceptions to disclosure for the department's IP addresses, this information must be released.

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). *See* Gov’t Code § 552.137(a)-(c). We note section 552.137 does not apply to an e-mail address “provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor’s agent[.]” *See id.* § 552.137(c)(2). We note the e-mail addresses you seek to withhold are subject to section 552.137(c)(2). Therefore, the department may not withhold the e-mail addresses at issue under section 552.137 of the Government Code. *See id.* § 552.137(a).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.² *Id.* § 552.117(a)(1). Section 552.117 is also applicable to 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) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Accordingly, the department must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The department may not withhold this information if the individual whose information is at issue did not make a timely election to keep the information confidential or the cellular telephone service is paid for by a governmental body.

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 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See*

²The 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).

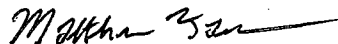
ORD 506 at 5-6. Upon review, we find the department must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body.

In summary, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the department must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. To the extent the cellular telephone service is not paid for by a governmental body, the department must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code. 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 639361

Enc. Submitted documents

c: Requestor
(w/o enclosures)