



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 2017

Mr. Tully Davidson  
City Administrator  
City of Grand Saline  
132 East Frank Street  
Grand Saline, Texas 75140

OR2017-23406

Dear Mr. Davidson:

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# 680009.

The City of Grand Saline (the "city") received a request for all filings related to a named former city official. You raise no exceptions to disclosure. We have considered your request for a ruling and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request. *See Econ. Opportunities Dev. Corp. V. Bustamante*, 562.S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See Gov't Code* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, 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 id.* § 552.301(e). You state the city received the instant request for information on July 19, 2017. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Because you do not inform this office the city was closed for business any of the days at issue, we find you were required to provide the information required by section 552.301(b) by August 2, 2017. Moreover, you were required to provide the information required by section 552.301(e) by August 9, 2017. However, the envelope in which the city requested a ruling from this office required by section 552.301(b) was postmarked August 8, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Furthermore, the envelope in which you submitted a copy or representative sample of the requested information, as required by section 552.301(e), was postmarked August 22, 2017. *See id.* Consequently, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Sections 552.117, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness.<sup>1</sup> Therefore, 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 addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone and pager numbers, provided the services are 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

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<sup>1</sup>The 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).*

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 only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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 or not later than the 14th day after the date on which the employee began employment with the city. *See* Gov't Code § 552.024(b). Upon review, we conclude, if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the service. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the city may not withhold this information under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold all account numbers, routing numbers, and credit card numbers, including partial numbers, within the remaining responsive information under section 552.136 of the Government Code.

We note some of the remaining responsive information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

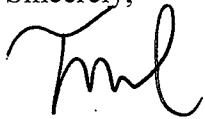
In summary, if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the service. The city must withhold the motor vehicle record information we have marked under

section 552.130 of the Government Code and all account numbers, routing numbers, and credit card numbers, including partial numbers, within the remaining responsive information under section 552.136 of the Government Code. The city must release the remaining responsive information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 680009

Enc. Submitted documents

c: Requestor  
(w/o enclosures)