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ATTORNEY GENERAL OF TEXAS

December 12, 2017

Mr. Mitchell G. Page
Counsel for the San Jacinto River Authority
Schwartz, Page & Harding, L.L.P.
1300 Post Oak Boulevard, Suite 1400
Houston, Texas 77056

OR2017-28225

Dear Mr. Page:

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# 687752.

The San Jacinto River Authority (the "authority"), which you represent, received a request for communications pertaining to a certain topic during a specified time period. You state the authority has released some information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the authority'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. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You state the authority received the request for information on September 18, 2017. You do not inform us the authority was closed on any business days between September 18, 2017 and October 2, 2017. Accordingly, the authority's ten-business-day deadline was October 2, 2017. However, you did not request a ruling from this office until October 3, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, we conclude the authority failed to comply with the requirements of section 552.301.

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). Although you assert the submitted information is excepted under section 552.103 of the Government Code, we find you have failed to establish a compelling reason to address your claim under this exception. However, sections 552.117 and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness.¹ Therefore, we will address the applicability of these sections 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). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)*. 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 employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the authority must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the authority may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the employees whose information is at issue did not timely request confidentiality under section 552.024, the authority may not withhold the marked information under section 552.117(a)(1).

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

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)*.

address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). A portion of the e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the authority must withhold the e-mail addresses we marked and indicated under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the authority must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the authority may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. The authority must withhold the e-mail addresses we marked and indicated under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The authority 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 687752

Enc. Submitted documents

c: Requestor
(w/o enclosures)