



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2019

Ms. Julie P. Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, L. L. P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-09287

Dear Ms. Doshier:

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# 758405 (Ref. No. 105700).

The City of Allen (the "city"), which you represent, received a request for information.¹ You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code

¹As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

§ 552.301(e)(1)(A)-(D). You inform us the city received the request for information on January 14, 2019. However, as of the date of this letter, you have not submitted to this office a copy of the written request for information. Accordingly, we conclude the city 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). The city claims sections 552.108, 552.117, and 552.152 of the Government Code for some of the submitted information. Because sections 552.117 and 552.152 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

Section 552.117(a)(12) 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 federal judge or state judge, as those terms are defined by section 13.0021(a) of the Election Code. Gov't Code § 552.117(a)(12). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (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). The city must withhold the telephone number we have marked under section 552.117(a)(12) of the Government Code; however, to the extent the marked telephone number is a cellular telephone number, the city may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body.

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). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* ORD 506 at 5-7. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the city must withhold the telephone numbers we have indicated under section 552.117(a)(2) of the Government Code; however, the city may only withhold any indicated cellular telephone numbers if the cellular telephone services are

not paid for by a governmental body. Conversely, if the individuals at issue are not currently licensed police officers as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not currently licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which 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). 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* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue made timely elections under section 552.024, then the city must withhold the telephone numbers we have indicated under section 552.117(a)(1) of the Government Code; however, the city may only withhold any indicated cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. Conversely, if the individuals at issue did not make timely elections under section 552.024, their information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The city represents the release of the undercover police officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the city must withhold the identifying information of the undercover officers, which we have marked, under section 552.152 of the Government Code.

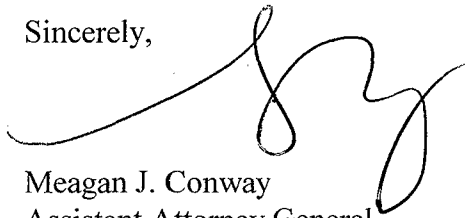
In summary, the city must withhold the telephone number we have marked under section 552.117(a)(12) of the Government Code; however, to the extent the marked telephone number is a cellular telephone number, the city may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the individuals at issue are currently licensed peace officers as defined by article 2.12 of

the Code of Criminal Procedure, then the city must withhold the telephone numbers we have indicated under section 552.117(a)(2) of the Government Code; however, the city may only withhold any indicated cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. If the individuals at issue are not currently licensed peace officers but made timely elections under section 552.024, then the city must withhold the telephone numbers we have indicated under section 552.117(a)(1) of the Government Code; however, the city may only withhold any indicated cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The city must withhold the identifying information of the undercover officers, which we have marked, under section 552.152 of the Government Code. The city 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/jxd

Ref: ID# 758405

Enc. Submitted documents

c: Requestor
(w/o enclosures)