



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Ms. Jessika J. Velasquez
Counsel for the City of Watauga
Law Offices of Evans, Daniel, Moore, Evans, Biggs, and Decker
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2019-19767

Dear Ms. Velasquez:

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# 776211 [PIA# 1255].

The City of Watauga (the "city"), which you represent, received a request for information pertaining to a specified affidavit filed by a named council member. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You argue section 2-174(b) of the city's Code of Ordinances for the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, a governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101 of the Government Code, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city

¹Although you raise section 552.305 of the Government Code, it is not an exception in the Public Information Act; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes another's privacy or property interests may be involved. Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) (city ordinance may not conflict with Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act). You have not directed our attention to any law, nor are we aware of any, that authorizes the city to make information confidential for purposes of the Act. Consequently, we conclude the city may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 2-174(b) of the Watauga Code of Ordinances.

We note some of the submitted information may be subject to section 552.117 of the Government Code.² 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, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the city may not withhold the information under section 552.117(a)(1). As no other exceptions to disclosure have been raised, 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.

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 No. 481 (1987), 480 (1987), 470 (1987)*.

Ms. Jessika J. Velasquez

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 "Pearlie Gault", with a long horizontal line extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 776211

Enc. Submitted documents

c: Requestor
(w/o enclosures)