



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2019

Mr. Robert Martinez  
Director  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

OR2019-26474

Dear Mr. Martinez:

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# 787094 (ORR# 19-48291).

The Texas Commission on Environmental Quality (the "commission") received a request for information related to a specified topic. You state you released some information. You claim some of the information is not subject to the Act. You further claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You argue some of the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code 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.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined 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. You argue some of the submitted information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. Upon review, we conclude the username and password information you marked is not "public information" for purposes of the Act, and the commission is not required to release it in response to this request.

Next, we must address the commission's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 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). The commission received the request for information on July 1, 2019. We understand the commission was closed on July 4, 2019. 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. Thus, the commission's ten-business-day deadline was July 16, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). However, the commission did not request a ruling from this office until July 18, 2019. Accordingly, we find the commission failed to comply with 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). The commission claims section 552.111 of the Government Code. However, we find you have failed to establish a compelling reason to address your claim under section 552.111 for this information. Accordingly, no portion of the submitted information may be withheld under

section 552.111. However, section 552.117 of the Government Code can provide a compelling reason to overcome the presumption of openness.<sup>1</sup> Therefore, we will address the applicability of section 552.117 to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. 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 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). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the commission must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The commission may not withhold the marked cellular telephone number under section 552.117(a)(1) if the individual did not make a timely election to keep the information confidential or a governmental body pays for the cellular telephone service.

In summary, the username and password information you marked is not “public information” for purposes of the Act, and the commission is not required to release it in response to this request. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the commission must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. The commission 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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<sup>1</sup> The 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).

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Emily Buchanan  
Assistant Attorney General  
Open Records Division

EBO/be

Ref: ID# 787094

Enc. Submitted documents

c: Requestor  
(w/o enclosures)