



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 13, 2020

Ms. Kelly Burris  
City Secretary  
City of Brownfield  
201 West Broadway  
Brownfield, Texas 79316-4429

OR2020-01214

Dear Ms. Burris:

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# 805908.

The City of Brownfield (the "city") received a request for all e-mails sent by the city manager and all e-mails between the city manager and police chief during a certain time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.133 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides, in relevant part, the following:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive

---

<sup>1</sup> We note the city sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor agreed to pay the estimated charges on October 22, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. . .

*Id.* § 552.133(a), (a-1). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). Although the city asserts section 552.133, it makes no arguments concerning this exception as required by section 552.301 of the Government Code. *See id.* §§ 552.301(e)(1)(A), .302. Further, we have not received arguments from any other party concerning this exception. Upon review, we find the city failed to demonstrate the submitted information relates to a competitive matter as defined by section 552.133(a-1). Accordingly, city may not withhold any portion of the submitted information under section 552.133 of the Government Code.

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.<sup>2</sup> *See id.* § 552.117(a)(1). 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. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

Section 552.137 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 address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine whether the personal e-mail addresses within the remaining information at issue, which are located within e-mails communicating official business of the city, belong to city officials, city employees, or vendors to the city. Thus, we rule conditionally. To the extent the e-mail addresses within the remaining information are the

---

<sup>2</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).

personal e-mail addresses of city officials or employees, or to the extent subsection (c) applies, this information is not subject to section 552.137 and may not be withheld on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov’t Code § 552.137(a)). However, to the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of city officials or employees and subsection (c) does not apply, this information is subject to section 552.137 and must be withheld under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release.

In summary, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. To the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of city officials or employees and subsection (c) does not apply, this information is subject to section 552.137 and must be withheld under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release. 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 <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 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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 805908

Enc. Submitted documents

c: Requestor  
(w/o enclosures)