



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 21, 2020

Mr. Thomas Wilson  
Assistant Criminal District Attorney  
Smith County  
100 North Broadway Avenue, Fourth Floor  
Tyler, Texas 75702

OR2020-01884

Dear Mr. Wilson:

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# 807129.

Smith County (the "county") received a request for a list of all county employees containing eight specified categories of information. You claim the submitted information is excepted from disclosure under section 552.139 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>1</sup> *See* Gov't Code § 552.117(a)(2). We note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the county must

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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).

withhold the information we marked under section 552.117(a)(2) of the Government Code.<sup>2</sup> Conversely, to the extent the individuals whose information is at issue are not peace officers as defined by article 2.12, then the county may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to individuals who are not currently licensed peace officers, then the marked information may be subject to section 552.117(a)(1) 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. *See Gov't Code* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a “home address” for purposes of section 552.117(a). *See ORD 622 at 4* (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home). 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 individuals at issue are not currently licensed peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals at issue are not peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the county 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

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<sup>2</sup> We note a governmental body may withhold a peace officer’s home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See Gov't Code* § 552.147(b); *Open Records Decision No. 670 (2001)*.

e-mail address is of a type specifically excluded by subsection (c).<sup>3</sup> Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the county must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

...

(4) information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.

*Id.* § 552.139(a), (b)(4). You assert release of the requested information could subject the county and its employees to a phishing attack. However, upon review, we find you have failed to demonstrate the information at issue relates to the county's computer network security, or to the design, operation, or defense of the county's computer network as contemplated in section 552.139(a). Further, we find you have failed to demonstrate the information at issue relates to routine efforts to prevent, detect, investigate, or mitigate a computer security incident. Therefore, no portion of the submitted information may be withheld under section 552.139 of the Government Code.

In summary, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the county must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are not peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we marked under section 552.117(a)(1) of the Government Code. The county must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The county 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.

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<sup>3</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).

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,

A handwritten signature in black ink, appearing to read 'Alex Burks', with a long horizontal flourish extending to the right.

Alexandra C. Burks  
Attorney  
Open Records Division

ACB/eb

Ref: ID# 807129

Enc. Submitted documents

c: Requestor  
(w/o enclosures)