



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 8, 2020

Mr. Kieran Hillis  
Public Information Coordinator and Assistant General Counsel  
Office of Governor Greg Abbott  
P.O. Box 12428  
Austin, Texas 78711

OR2020-25363

Dear Mr. Hillis:

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# 845590 (OOG ID Nos. 387-20 & 388-20).

The Office of the Governor of the State of Texas (the "governor's office") received two requests from the same requestor for e-mail communications between named officials and entities that include certain keywords from two defined periods of time. You claim some of the submitted information is not subject to the Act. Additionally, you state the governor's office has notified interested third parties of the right to submit comments to this office why some of the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your argument and reviewed the submitted information.

You state the information you indicated has been designated by the U.S. Department of Homeland Security ("DHS") Federal Emergency Management Agency as "FOR OFFICIAL USE ONLY" ("FOUO") information and subject to the release restrictions as detailed in section 482 of title 6 of the United States Code. Section 482(e) provides:

(e) Federal control of information

Under procedures prescribed under this section, information obtained by State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

6 U.S.C. § 482(e). Accordingly, the Act does not control the release of the information at issue. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law). Section 482(a)(1) states, in pertinent part, “[t]he President [of the United States] (the “President”)] shall prescribe and implement procedures under which relevant Federal agencies-- (A) share relevant and appropriate homeland security information with . . . appropriate State and local personnel.” 6 U.S.C. § 482(a)(1)(A). In section 1(a) of Executive Order No. 13,311, the functions of the President under section 482(a)(1) were assigned to the Secretary of Homeland Security. Exec. Order No. 13,311, § 1, 3 C.F.R. 245 (2004), *reprinted in* 6 U.S.C. § 482. In January of 2005, DHS issued Management Directive Number 11042.1 establishing DHS policies and procedures regarding the safeguarding of FOUO information. This directive, in relevant part, instructs a state agency in possession of FOUO information from another governmental agency to handle the information in accordance with the guidance provided by the other governmental agency. Department of Homeland Security Management Directive System, MD Number 11042.1 at 8 (Jan. 6, 2005). Based on the scheme described above and your representations, we find the decision to release or withhold the information at issue is not for this office or the governor’s office to make, but rather is a decision for an authorized DHS official. Therefore, the governor’s office may not release the information you indicated at this time under the Act but must refer the information to DHS to make a determination concerning disclosure of this information.

Section 552.117(a)(1) of the Government Code exempts 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>1</sup> *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). 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

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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).

former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose cellular telephone number we indicated timely requested confidentiality under section 552.024 of the Government Code, the governor's office must withhold this information under section 552.117(a)(1) of the Government Code if a governmental body does not pay for the cellular telephone service.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why the remaining information should not be released. Therefore, we have no basis to conclude any third has a protected proprietary interest in the remaining information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the governor's office may not withhold the any of the remaining information on the basis of any proprietary interest any third party may have in the information.

In summary, the governor's office may not release the information you indicated at this time under the Act but must refer the information to DHS to make a determination concerning disclosure of this information. If the individual whose cellular telephone number we indicated timely requested confidentiality under section 552.024 of the Government Code, the governor's office must withhold this information under section 552.117(a)(1) of the Government Code if a governmental body does not pay for the cellular telephone service. 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.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/jm

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Enc. Submitted documents

c: Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)