



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2022

Ms. Erin Higginbotham
Counsel for the City of Hutto
Bojorquez Law Firm, PC
11675 Jollyville Road, Suite 300
Austin, Texas 78759

OR2022-25898

Dear Ms. Higginbotham:

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# 965738 (ORR# R002605-060622).

The City of Hutto (the "city"), which you represent, received a request for information pertaining to a named former city police department officer. We understand you have released some information. You claim the submitted information is excepted from disclosure under section 552.117 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. Additionally, the city provides documentation showing it has notified an individual of the right to submit comments to this office why some of the submitted information should not be released.² *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See id.* § 552.117(a)(2); *see also id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory

¹ Although you raise section 552.1175 of the Government Code for portions of the information at issue, we note section 552.117 of the Government Code is the proper exception to raise for information held in an employment capacity. *See* Gov't Code §§ 552.117, .1175.

² As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individual whose information is at issue is a current or honorably retired peace officer as defined by article 2.12. If the individual at issue is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure, then the city must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the individual at issue is not a current or honorably retired peace officer as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code. In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(2) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a current or honorably retired peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. 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* ORD 506 at 5-6. 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). The city may only withhold the information at issue under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individual whose information is at issue is no longer a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure but timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the employee at issue did not timely request confidentiality under section 552.024, the city may not withhold the information under section 552.117(a)(1). In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(1) of the Government Code.

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 e-mail address is of a type specifically excluded by subsection (c).³ *See* Gov't Code

³ 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).

§ 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, if the individual at issue is a currently licensed or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. To the extent the individual whose information is at issue is no longer a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure but timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The city must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. 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,

Pearlie Gault
Assistant Attorney General
Open Records Division

PG/eb

Ref: ID# 965738

Enc. Submitted documents

c: Requestor
(w/o enclosures)