



September 20, 2000

Ms. Ann Dillon
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2000-3636

Dear Ms. Ann Dillon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 139237.

The General Services Commission (the "commission") received a request for information which states in pertinent part:

[The commission] has received complaints from at least four state agencies regarding larger than normal bills for long-distance telephone service, a service overseen by [the commission]. I would like to know what four agencies protested their bills and the sizes of the bills that initiated their complaints. I would also like to see previous bills for each agency that might indicate the size of a normal billing.

As to the requested long distance bills, you explain that even if held by the commission, this office has found that such records are not records of the commission that are subject to disclosure pursuant to a request under the Act that is submitted to the commission, and that the long distance bills have accordingly been withheld. *See* Open Records Decision No. 657 at 5 (1997) (concluding that the commission holds the telephone records of other governmental entities merely as agent for the entity, and that requests for such information should thus be referred to the entity). You further explain that "[t]he requestor is being advised to approach [the] individual agencies for their bills." *See id.* You advise that four complaints are responsive to the request, two of which have been released to the requestor.

You have submitted for our review the remaining two complaints, marked as attachments “B” and “C.” You state that attachment B “was turned over to the Department of Public Safety for investigation[.]” and you therefore assert this information is excepted from disclosure by section 552.108 of the Government Code, the “law enforcement” exception. *See* Gov’t Code § 552.108. You explain that attachment C was marked “confidential” by the sending agency and therefore “may be” excepted from disclosure under sections 552.101 or 552.116 of the Government Code.¹ We have considered the exceptions you have raised, the submitted comments, and we have reviewed the submitted information.

We first address attachment B. In relevant part, section 552.022 states that certain categories of information “are public information and not excepted from required disclosure under [chapter 552 of the Government Code] unless they are *expressly confidential under other law*[.]” Gov’t Code § 552.022(a) (emphasis added). Among such categories is “information *in an account, voucher or contract relating to the receipt or expenditure of public or other funds by a governmental body*[.]” *See id.* 552.022(a)(3) (emphasis added). Attachment B consists of an e-mail and spreadsheet that indicate the long distance expenditures of a governmental entity, information which we believe is subject to section 552.022(a)(3). Because section 552.108 of the Government Code does not constitute “other law” that makes this information confidential, we conclude the commission must release attachment B to the requestor.

As to attachment C, the commission has submitted no arguments in support of the section 552.101 and 552.116 assertions. Because your request to this office is copied to the governmental entity from which the commission obtained attachment C, you apparently rely on that governmental entity (which marked the information as “confidential”) to explain to this office how the information is excepted from required public disclosure.² We have received no arguments in support of the exceptions you have raised, nor is it apparent to this office that either section 552.101 or 552.116 apply to attachment C. We therefore conclude that the commission must also release attachment C to the requestor.

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.116, in pertinent part, excepts from disclosure an “audit working paper of an audit of the state auditor or the auditor of a state agency[.]”

²The commission apparently notified the third party governmental entity of the request for attachment C by sending the entity a copy of the commission’s request letter to this office. We advise that section 552.305 of the Government Code provides the procedure to follow where commission records that are responsive to a request under the Act contain information that may implicate the privacy or proprietary interests of a third party. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

In summary, the commission must release to the requestor the submitted attachments B and C.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

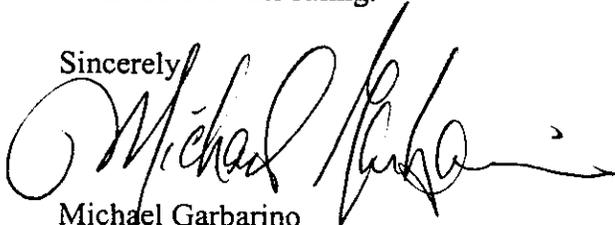
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely

A handwritten signature in black ink, appearing to read "Michael Garbarino", with a long horizontal flourish extending to the right.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 139237

Encl. Submitted documents

cc: Mr. Ross Ramsey
Texas Weekly
P. O. Box 1484
Austin, Texas 78767
(w/o enclosures)