



August 30, 2002

Mr. Steven D. Monté  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
2014 Main, Room 501  
Dallas, Texas 75201

OR2002-4887

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167923.

The Dallas Police Department (the “department”) received a request for information relating to itemized bills for cellular telephones assigned under ORG # 2115 from January 1, 2001 to June 1, 2002, including the actual bills for each cell phone number; incoming and outgoing phone numbers; dates, times and costs of calls; reimbursement receipts paid by employees; and receipts paid by the City of Dallas. The department claims that some of the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.<sup>1</sup> We note that the submitted information does not include the requested receipts. We therefore assume that the department has released any information, to the extent that it exists, that is responsive to that aspect of this request. If not, then the department must do so at this time. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 664 (2000). The department is not required, however, to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We first note that the submitted information comes within the scope of section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). In this instance, the information at issue is contained in an account relating to the expenditure of public funds by a governmental body. Therefore, the information must be released under section 552.022(a)(3) unless it is expressly confidential under other law. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive law enforcement exception). Thus, the department may not withhold any of the submitted information under section 552.108.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld from public disclosure under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977).<sup>2</sup> This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In this instance, the department indicates that the submitted information includes the telephone numbers of confidential informants. The department asserts that the release of these telephone numbers could endanger the informants' lives. We note that the department does not identify any particular telephone numbers that involve confidential informants. To the extent, however, that the submitted information contains the telephone numbers of confidential informants, we conclude that such information is confidential under section 552.101 in conjunction with common-law privacy and must be withheld from disclosure. *See* Open Records Decision No. 169 (1977).

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<sup>2</sup>Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The department also states that the submitted information includes home telephone numbers of police officers and other city personnel that section 552.117 of the Government Code exempts from disclosure. Under section 552.117(2), the department must withhold the home telephone number of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer has complied with section 552.024 of the Government Code. The home telephone number of a current or former civilian employee of the City of Dallas is excepted from disclosure under section 552.117(1) if the current or former employee timely requested under section 552.024 that this information be kept confidential. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 2-3 (1987). The home telephone number of a civilian employee may not be withheld, however, if the employee in question requested confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time that the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

In summary, the department must withhold the telephone numbers of confidential informants under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the home telephone number of a peace officer under section 552.117(2) of the Government Code. The home telephone number of a civilian employee of the City of Dallas is excepted from disclosure under section 552.117(1) if the employee made a timely election under section 552.024 to keep this information confidential. The department must release the rest of the requested information.

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

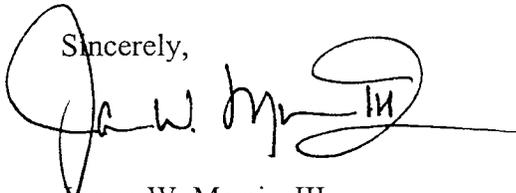
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 167923

Enc: Submitted documents

c: Mr. Chandler Gadis  
1130 South Joe Wilson Road  
Cedar Hill, Texas 75104  
(w/o enclosures)